

Study Group on Recalled Judges

Interim Report
December 1, 2005

STUDY GROUP ON RECALLED JUDGES

Hon. John C. Eldridge
CHAIR
Hon. Theodore G. Bloom
Hon. Richard R. Bixom
Hon. Arrie W. Davis
Hon. Barbara Kerr Howe
Hon. Thurman H. Rhodes
Hon. Richard T. Rombro
Hon. I. Marshall Seidler
Hon. Mary Ann Stepler
Hon. Paul H. Weinstein

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December 1, 2005

The Honorable Robert M. Bell
Chief Judge,
The Honorable Irma S. Raker
The Honorable Alan M. Wilner
The Honorable Dale R. Cathell
The Honorable Glenn T. Harrell, Jr.
The Honorable Lynne A. Battaglia
The Honorable Clayton Greene, Jr.
Judges,
The Court of Appeals of Maryland
Murphy Courts of Appeal Building
Annapolis, Maryland 21401

RE: Recalled Judges

Your Honors:

Enclosed is an interim report from the Study Group on Recalled Judges, created in April 2005, to examine ethics issues and other matters concerning recalled judges.

The Study Group concluded that it would be appropriate to posit a number of recommendations in an interim report, in order to allow for prompt implementation should you concur and the budget permit or for planning for the budget submission for Fiscal Year 2007.

Very truly yours,

John C. Eldridge
Chair

cc: Study Group on Recalled Judges
Elizabeth Buckler Veronis, Esq.

Interim Report

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Formation and Membership

The Honorable Robert M. Bell, Chief Judge of the Court of Appeals, created the Study Group on Recalled Judges in April 2005, at the behest of the Judicial Ethics Committee in [*The Report of the Judicial Ethics Committee and One Hundred Fifty-Third Report of the Rules Committee*](#).¹ A roster appears in Appendix A.

Meetings

The Study Group met on May 2, 2005, June 6, 2005, July 18, 2005, and October 6, 2005, deciding on a number of recommendations that the Group felt should be proposed to the Court of Appeals as soon as practicable, to address the specific ethical issues prompting formation of the Group and to allow for prompt implementation should the Court concur and the Judiciary's budget permit or for planning for the Judiciary's budget submission for Fiscal Year 2007.

Survey

The Study Group sent to each judge currently eligible for recall a survey as to current practices and wishes. The survey results are summarized in Appendix B.

Recommendations

Recommendation No. 1: *Recalled judges who are willing to work as a judge at least 50% of the 246 days to be used for computation of a per diem under Code, Courts and Judicial Proceedings Article § 1-302, shall be subject to all provisions of the Maryland Code of Judicial Conduct and the financial disclosure requirement.*

The Maryland Code of Judicial Conduct adopted by the Court of Appeals pursuant to the Rules Order dated December 2, 2004 (effective July 1, 2005), exempts recalled judges from

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“The Committees recommend that the application of the Maryland Code of Judicial Conduct be expanded to bring recalled judges within the ambit of proposed Canon 4D(1)(a), which bars extra-judicial business or financial dealings that ‘reasonably would be perceived to violate Canon 2B.’ The Judicial Ethics Committee believes, however, that consideration of the Code *viz á viz* recalled judges is needed in greater detail than is possible within the scope of this project. In any event, the Committee feels that recalled judges should be included as members of any such study group.” [*Report*](#) at 12.

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the following provisions: Canon 4C²; Canon 4D(2)³; Canon 4E⁴; Canon 4 F⁵;

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Canon 4C reads:

(1) Except when acting in a matter that involves the judge or the judge's interests, when acting as to a matter that concerns the administration of justice, the legal system, or improvement of the law, or when acting as otherwise allowed under Canon 4, a judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official.

(2) Except as otherwise provided by law and subject to Canon 4A, a judge may accept appointment to a governmental advisory commission, committee, or position.

(3) A judge may represent this country, a state, or a locality on ceremonial occasions or in connection with cultural, educational, or historical activities.

(4) (a) Subject to other provisions of this Code, a judge may be a director, member, non-legal adviser, officer, or trustee of a charitable, civic, educational, fraternal or sororal, law-related, or religious organization.

(b) A judge shall not be a director, adviser, officer, or trustee of an organization that is conducted for the economic or political advantage of its members.

(c) A judge shall not be a director, adviser, officer, or trustee of an organization if it is likely that the organization:

(i) will be engaged regularly in adversary proceedings in any court; or

(ii) deals with people who are referred to the organization by any court.

(d) (i) A judge shall not participate personally in:

(A) solicitation of funds or other fund-raising activities, except that a judge may solicit funds from other judges over whom the judge does not exercise appellate or supervisory jurisdiction; or

(B) a membership solicitation that reasonably might be perceived as coercive or, except as permitted in Canon 4C(4)(d)(i)(A), is essentially a fund-raising mechanism.

(ii) A judge shall not participate as a guest of honor or speaker at a fund-raising event.

(iii) Except as allowed by Canon 4C(4)(d), a judge shall not use or lend the prestige of judicial office for fund-raising or membership solicitation.

(iv) A judge may:

(A) assist an organization in planning fund-raising;

(B) participate in the investment and management of an organization's funds; and

(C) make recommendations to private and public fund-granting organizations on programs and projects concerning the administration of justice, the legal system, or improvement of the law.

3

Canon 4D(2) reads:

(2) Subject to other provisions of this Code, a judge may hold and manage investments, including real estate, and engage in other remunerative activities except that a full-time judge shall not hold a directorship or office in a bank, insurance company, lending institution, public utility, savings and loan association, or other business, enterprise, or venture that is affected with a public interest.

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Canon 4E reads:

(1) (a) Except as provided in Canon 4E(1) and then only subject to other provisions of this Code

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and Rule 16-815g⁶.

In this regard, the Maryland Code of Judicial Conduct is less stringent than the American Bar Association's Model Code of Judicial Conduct (2000, as amended 2003) as it applies to judges who are subject to recall and are not permitted to practice law. Under Maryland Code of Judicial Conduct, Canon 4G, a judge is not to practice law and, thus, through Canon 6C and Courts and Judicial Proceedings Article § 1-302(c)(5), a judge subject to recall may not practice.⁷ As to those judges, the entire Model Code would be applicable with an exception from the fiduciary limits at any time and an exception from the arbitration and mediation proscription while not serving as a judge.

A majority of the Study Group believes that these provisions should be applicable to at least those Maryland recalled judges who work as a judge a substantial portion of each year, using 50% as the standard. The federal system uses a less arduous 25% and allows time to be made up during ensuing years. The Group recommends, however, that recalled judges in Maryland

and statutes, a judge shall not serve as a fiduciary.

(b) A judge may serve as a fiduciary for a member of the judge's family.

(c) A judge who has served as a trustee of a trust since December 31, 1969, may continue to do so as allowed by law.

(2) A judge shall not agree to serve as a fiduciary if it is likely that, as a fiduciary, the judge will be engaged in proceedings that ordinarily would come before the judge or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves or in a court under the appellate jurisdiction of the court on which the judge serves.

(3) The restrictions that apply to personal financial activities of a judge also apply to the judge's fiduciary financial activities.

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Canon 4F reads:

A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.

6

Rule 16-815g reads:

This rule applies to any judge of a court named in Canon 6A who has resigned or retired in any calendar year, with respect to the portion of that calendar year prior to his resignation or retirement.

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The exception for a part-time orphans' court judge is inapplicable because Courts Art. §§ 1-101 and 1-302(a) combine not to apply to orphans' court judges. Maryland Constitution, Art. IV §§ 3A and 18 enable the Chief Judge to recall a retired circuit court judge from Harford or Montgomery County to perform any act of a judge of the orphans' court in that county.

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opt at the beginning of the year for which their respective appointment is to be effective whether to work at least 50% of the 246 days. This recognizes that a formula based on the actual number of days on which a recalled judge works could result in a judge being exempted from provisions of the Maryland Code of Judicial Conduct for part of a year and then subject to the provisions at another time. An option at the beginning of each calendar year for which a designation is being made commits the retired judge to being subject to the Maryland Code of Judicial Conduct and the financial reporting requirements, whether the recalled judge actually works as a judge for more than 50% of the year. Draft modifications of Administrative Office of the Courts' letter on assistance to the courts and the letter of consent to serve are attached. *See Appendix C.*

Statistics provided by the Administrative Office of the Courts (*see Appendix D*), based on reporting by recalled judges, indicate that only a few recalled judges work for the Judiciary more than 123 days per year, so that the majority of the Study Group does not view a "50%" rule as overly burdensome to recalled judges or as detrimental to the Judiciary. The Study Group recognizes, however, that the available statistics are unlikely to provide an accurate prediction of the impact.⁸

A minority view, held by the Chairman and a few others, is that recalled judges should be subject to all of the provisions of the Maryland Code of Judicial Conduct, financial disclosure requirements, *etc.*, to which other judges are subject. Neither the public nor the litigants nor attorneys in a case are concerned with whether the sitting judge is a "regular" or "recalled" judge. The minority believes that there is no logical basis for distinguishing between "regular" and "recalled" judges with regard to ethical matters. Moreover, the minority's position does not present the administrative problems presented by the "50%-rule".

A summary of federal and state laws appears in Appendix E.

Recommendation No. 2: *A per diem should be paid for each day that a recalled judge works, without being predicated on an 8-hour workday, and shall be counted toward the*

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With regard to the statistics, the Study Group notes a lack of consistency in reporting, with some recalled judges ceasing to report hours after working the maximum reimbursable hours. Additionally, judges who serve fewer than 16 years before they retire can work more than 82 days per year as they are not receiving a full pension, and, without reference to retirement information, it cannot be determined how this affects the reporting. Additionally, a limited construction of "judicial duties" to exclude, for example, attendance of meetings and teaching for the Judicial Institute results in further under-reporting of hours.

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maximum based on date payment is earned.

The Study Group notes a lack of certainty as to interpretation and application of the statutory provisions with regard to a *per diem* and suggests formalization of the interpretation that a recalled judge is entitled to a *per diem* for each day, or part of a day, on which the recalled judge works. This change reflects the language of Courts and Judicial Proceedings Article § 1-302(d) and (f), which uses the words “working days”, “180-day period”, “per diem”, and “each day [a judge] is actually engaged in the discharge of judicial duties”. There appears to be no basis in the statutes or the Maryland Rules for the current hourly system used by the Administrative Office.

This change also can alleviate any discrepancy resulting from a distinction between courtroom time and non-courtroom time, although the Study Group notes the detailed description of creditable service outlined by the federal statutes⁹, as implemented in *Senior*

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28 U. S. C. § 371(e) reads, in pertinent part:

(1) In order to continue receiving the salary of the office under subsection (b), a justice must be certified in each calendar year by the Chief Justice, and a judge must be certified by the chief judge of the circuit in which the judge sits, as having met the requirements set forth in at least one of the following subparagraphs:

(A) The justice or judge must have carried in the preceding calendar year a caseload involving courtroom participation which is equal to or greater than the amount of work involving courtroom participation which an average judge in active service would perform in three months. In the instance of a justice or judge who has sat on both district courts and courts of appeals, the caseload of appellate work and trial work shall be determined separately and the results of those determinations added together for purposes of this paragraph.

(B) The justice or judge performed in the preceding calendar year substantial judicial duties not involving courtroom participation under subparagraph (A), including settlement efforts, motion decisions, writing opinions in cases that have not been orally argued, and administrative duties for the court to which the justice or judge is assigned. Any certification under this subparagraph shall include a statement describing in detail the nature and amount of work and certifying that the work done is equal to or greater than the work described in this subparagraph which an average judge in active service would perform in three months.

(D) The justice or judge has, in the preceding calendar year, performed substantial administrative duties directly related to the operation of the courts, or has performed substantial duties for a Federal or State governmental entity. A certification under this subparagraph shall specify that the work done is equal to the full-time work of an employee of the judicial branch. In any year in which a justice or judge performs work

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Status and Retirement for Article III Judges (April 1999), which, at 9, delineates services creditable for certification as follows:

A caseload is deemed to involve **courtroom participation** if it consists of the types of cases that are assigned to active judges or that regularly require courtroom participation, even though some cases can be terminated with no courtroom activity. Under the workload certification criteria the following **noncourtroom judicial duties** are creditable: settlement efforts, motion decisions, researching and writing opinions, and administrative duties for the court to which a judge is assigned. **Administrative duties** are those directly related to the operation of the courts in general, or for a federal or state governmental entity, including service:

- on the Judicial Conference of the United States or a committee thereof, or on a circuit judicial conference;
- on a committee formed by an act of Congress, on a committee of or by assignment of the Federal Judicial Center for the purpose of training or educating personnel of the judge's court;
- on a committee of or by assignment of the Administrative Office of the United States Courts which is directly related to the work of the court; and
- in any administrative capacity assigned by the circuit judicial council, the circuit chief judge, or the district chief judge.

Specifically, the Study Group recommends that, for example, instructor-time for the Judicial Institute be credited while optional attendance of programs for personal training should not. Similarly, conferences and bench and other meetings at which work of the court was discussed should be credited.

The Study Group recommends documentation by administrative order of the Chief Judge of the Court of Appeals or rule of the Court of Appeals.

The Study Group recognizes, among the potential impacts of this recommendation, that there might be a budgetary impact of using a *per diem* rather than an hourly system. Together with

described under this subparagraph for less than the full year, one-half of such work may be aggregated with work described under subparagraph (A), (B), or (C) of this paragraph for the purpose of the justice or judge satisfying the requirements of such subparagraph.

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Recommendation No. 1, the pool of recalled judges could be affected if judges reached the 123-day limit more quickly. Accordingly, the Study Group recommends updating of the Administrative Order Amending Temporary Judicial Assignment Plan for Circuit Courts, dated June 16, 1978, to cover recalled judges and specify the need to plan a full workload for assigned judges. A concomitant change in the standard designation order may be needed.

Recommendation No. 3: *The statutory maximum on earnings of a recalled judge shall be computed on the basis of the date earned.*

There is no written documentation of the interpretation that a *per diem* is to be counted towards the statutory maximum based on the date on which earned, rather than the date on which the Comptroller's Office happens to deposit the check in the recalled judge's bank account. An informal survey indicates a wide variation among recalled judges in the times between submission of a voucher and deposit of payment. This can be particularly meaningful regarding earnings late in a tax year.

The Study Group recommends documentation by administrative order of the Chief Judge of the Court of Appeals or rule of the Court of Appeals.

Recommendation No. 4: *A recalled judge shall be deemed an employee and not an independent contractor.*

As with *per diem*, the policy of construing recalled judges to be independent contractors – and, therefore, the State avoiding payment of the employer's share of Social Security and Medicare taxes – is believed to have been developed administratively and without documentation or any basis in the statutes or Maryland Rules.

The Study Group believes that there is no legal principle in support of treating, or record of the decision to treat, recalled judges as independent contractors. The major factor in determining status is control and, if anything, the control of the Court of Appeals is greater as to recalled judges. *See* Appendix F as to the 20 common law factors identified by the Internal Revenue Service in distinguishing between independent contractor and employee status.

Furthermore, the Study Group believes that the current policy is unfair, understanding the legislative history of current Courts Article § 1-302 to have contemplated that a recalled, retired judge could earn as much as – although no more than – an active judge, which is not possible without the State's payment of an employer's share of Social Security and Medicare

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taxes.

The Study Group recommends a change in the administrative policy and documentation by administrative order of the Chief Judge of the Court of Appeals or administrative rule of the Court of Appeals.

Recommendation No. 5: *A standard procedure should ensure that recalled judges receive information about educational materials and programs available to active judges and be provided with appropriate resources.*

The Study Group recognizes that recalled judges need to keep current with the law. Indeed, they are so obliged by the Maryland Code of Judicial Conduct, Canons 3A(1) and 6C to “maintain professional competence” in the law.

The Study Group recommends that the Administrative Office of the Courts transmit to the Judicial Institute, at appropriate intervals, information allowing dissemination of information about the Institute’s educational programs to recalled judges. This recommendation could require a recalled judge’s consent to transmittal, to the Institute, of home addresses or other private information.

Additionally, the Study Group recommends that recalled judges be allowed access to the intranet and internet sites by which active judges have access to educational materials. In this connection, the Study Group noted in particular access to the law publisher account and also recognized the move towards disseminating materials in electronic form, noting, for example, the discussion of the *Benchbook Revision Oversight Committee* about electronic versions of *Benchbook* volumes to supplement the printed version.

As to printed materials, specific mention was made of *The Trial Judges’ Benchbook* and *The Judicial Ethics Handbook*.

Recommendation No. 6: *Recalled judges should have the option of listing personal electronic mail addresses in addition to governmental addresses, if any.*

The Study Group is aware that, on retirement, some judges no longer have electronic mail through the State or local government. Others continue to have government addresses but find home access to be more convenient or timely. Therefore, the Study Group believes that those judges who wish to do so should be allowed to use a personal electronic mail address to receive communications relating to recall assignments or, for example, bulletins about

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education materials. Accordingly, the Study Group asks that the Judicial Information Systems establish a procedure whereby a recalled judge may provide a private electronic mail address for use in intra-Judiciary communication.

Nevertheless, a recalled judge who still have a government office, and wishes to receive materials at that office, should be able to do so. The Chair notes that, even though he has an office in the Courts of Appeal Building, most judiciary agencies send materials to his home, rather than his office.

Summary

The Study Group will continue its consideration of other aspects of recall to judicial service, beginning with a meeting on December 6, 2005, and will submit a final report.

For your convenience, Appendices C and G contain draft letters implementing recommendation in this interim report.

Appendix A

Study Group on Recall of Retired Judges

Hon. John C. Eldridge, Chair

Hon. Theodore G. Bloom

Hon. Richard T. Rombro

Hon. Richard R. Bloxom

Hon. I. Marshall Seidler

Hon. Arrie W. Davis

Hon. Mary Ann Stepler

Hon. Barbara Kerr Howe

Hon. Paul H. Weinstein

Hon. Thurman H. Rhodes

Appendix B

Survey Results

Appendix C

Letter on Assistance to the Courts

<<date>>

D

[JUDGE'S NAME]

[JUDGE'S ADDRESS]

Re: Assistance to Courts as follows: <<Judicial Circuit/District>> for Period of <<date through date>>

Dear Judge [NAME]:

I am informed of your willingness to assist the courts as indicated above.

All former judges, both at the appellate and trial court levels, are asked to help the Administrative Office of the Courts monitor the nature and extent of the use of former judges by following procedures that the Office believes are not too burdensome.

1. Statute. Enclosed is the text of Maryland Code, Courts and Judicial Proceedings Article ("Courts Article") § 1-302, which sets forth the conditions and limitations of recall.

2. Maximum Period of Assignment. You cannot be assigned for more than 180 working days in a calendar year, unless a case you are hearing is not concluded at the end of the 180-day period, in which instance the time may be extended until the case is concluded.

3. Compensation. *Per diem* compensation is paid for each day you perform judicial duties, whether for fewer or more than 8 hours. You will receive neither compensatory time nor cash overtime for more than 8 hours work per day.

The *per diem* is computed on the bases of 246 working days per year and the current annual salary of an active judge of the court on which you served immediately before resigning or retiring. <<Effective July 1, 2005, the salary of an active Circuit Court Judge will be \$123,352 and the *per diem* is \$501 per day.>>

Courts Article § 1-302(f)(1) states, in part:

If the sum of the per diem payments received by a former judge in any one calendar year, when added to the retirement allowance [the judge] is entitled to receive during that calendar year, equals the annual salary

of a judge of the court in which the former judge served immediately prior to the termination of his[/her] active service, no further per diem is payable to the former judge in that calendar year.

D A retired judge on full pension (16 years) can be compensated for approximately 82 working days in a calendar year. **Please note that the Administrative Office of the Courts does not inform retired judges when they have reached their maximum earning limit for any given calendar year.**

The Central Payroll Bureau of the State Comptroller's Office will send you a Form 1099 on an annual basis.

4. Expenses. Enclosed is a copy of the Joint Travel Regulations for the Judicial Branch of Government, which governs the expenses for which you will be reimbursed.

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5. Health & Retirement Deductions. As Courts Article § 1-302(f)(2) provides that no deductions from *per diem* compensation are made for any health or retirement benefits. Those benefits are paid through the pension system.

6. Vouchers. Enclosed are vouchers that may help you to keep track of time and compensation paid, although you may wish to keep separate and more detailed records. You are asked to show the total hours worked, whether fewer or greater than 8 hours per day, and to include travel time outside your county of residence.

A
The Administrative Office asks that you send completed vouchers, at least every 2 weeks, to:

Administrative Office of the Courts
c/o Debra L. Kaminski
Maryland Judicial Center – 2nd Floor
580 Taylor Avenue
Annapolis, Maryland 21401

F
7. Direct Deposit. I have enclosed a memorandum dated May 26, 2004, regarding direct deposit.

8. Ethics. Enclosed is the text of the Maryland Code of Judicial Conduct, effective <<July 1, 2005>>.

9. Consent. I enclose a letter of consent that all recalled judges are asked to sign.

T
Should you have any questions, do not hesitate to call me at (410) 260-1292.

Sincerely yours,

Debra L. Kaminski

D
Enclosures

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Courts and Judicial Proceedings Article

1-302.

(a) In this section, "former judge" means a judge who previously served in a court.

(b) Except as provided in subsection (c) of this section, the Chief Judge of the Court of Appeals may assign any former judge to sit temporarily in any court if the temporary assignment is approved by the administrative judge of the circuit in which the former judge is to be assigned and if the former judge:

(1) Has served in the aggregate at least 2 years as a judge, except that in Baltimore City and Charles, Prince George's, and Harford counties the former judge shall have served in the aggregate at least 3 years as a judge;

(2) Has been approved for assignment by a majority of the judges of the Court of Appeals;

(3) Meets the standards established by this section as well as any additional standards established by rule of the Court of Appeals; and

(4) Has consented to the assignment.

(c) A former judge may not be recalled for temporary assignment if the judge:

(1) Was removed or involuntarily retired from judicial office pursuant to the Constitution or laws of this State;

(2) Voluntarily retired by reason of disability;

(3) Had the most recent service as a judge terminated by reason of defeat for election to judicial office or by rejection of confirmation by the Senate;

(4) Was censured by the Court of Appeals upon recommendation of the Commission on Judicial Disabilities; or

(5) Is engaged in the practice of law.

(d) A former judge recalled under this section may not be temporarily assigned for more than 180 working days in any calendar year. However, if the case which the former judge is hearing at the end of the 180-day period is not concluded, the time may be extended until that case is concluded.

(e) A former judge temporarily assigned under this section has all the power and authority of a judge of the court to which he is assigned.

(f) (1) Whether or not he is receiving a retirement allowance, a former judge temporarily assigned under this section shall receive a per diem compensation for each day he is actually engaged in the discharge of judicial duties based on the current annual salary of the court in which he served immediately prior to his resignation or retirement. The per diem shall be computed on the basis of 246 working days a year. If the sum of the per diem payments received by a former judge in any one calendar year, when added to the retirement allowance he is entitled to receive during that calendar year, equals the annual salary of a judge of the court in which the former judge served immediately prior to the termination of his active service, no further per diem is payable to the former judge in that calendar year.

(2) A deduction may not be withheld for health benefits or retirement purposes from the compensation paid to a former judge during temporary judicial service.

The performance of temporary judicial service does not provide additional service for retirement credit purposes.

(3) In addition to the per diem compensation provided for in paragraph (1), he shall be reimbursed for reasonable expenses actually incurred by reason of the assignment, in accordance with State joint travel regulations.

(g) Preference for temporary assignment shall be given to retired judges from the circuit in which the temporary assignment is to take place.

[JUDGE'S ADDRESS]

D

The Honorable, The Judges of the Court of Appeals
Murphy Courts of Appeal Building
361 Rowe Boulevard
Annapolis, Maryland 21401

**Re: Consent to Serve Full or Part-Time and
Certification as to Practice of Law and**

R

Your Honors:

Pursuant to Maryland Code, Courts and Judicial Proceedings Article § 1-302(b)(2), I hereby consent to an assignment to sit as an associate judge of the courts as follows:

<<Judicial Circuit/District>> for the period from <<date>> through <<date>>, both inclusive.

A

I hereby certify my availability, for 123 days or more fewer than 123 days, during this period, thereby binding myself to excluding myself from compliance with the Maryland Code of Judicial Conduct in accordance with the provision pertaining to service for more than 50% per year.

Pursuant to Courts and Judicial Proceedings Article § 1-302(c)(5), I hereby certify that I am not now engaged in the practice of law.

F

For correspondence from the Judiciary, please use the following mailing address, which I hereby consent to have provided to the Judicial Institute to allow receipt of information on courses that I may attend:

<<ADDRESS>>

Please forward the following electronic mail address(es) to the Judicial Information Systems for inclusion in the address book available to the Judiciary:

T

<<e-mail address(es)>>.

Very truly yours,

[JUDGE'S NAME]

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Appendix D

Statistics

Appendix E

Summary of Federal and State Laws

See Chart

Appendix F

Internal Revenue Service Ruling 87-41

Revenue Ruling 87-41

20 Common Law Factors

To help taxpayers determine whether an individual is an employee under the common law rules, the Internal Revenue Service (IRS) has identified 20 factors, which are used as guidelines to determine whether sufficient control is present to establish an employer-employee relationship.

These factors should be considered guidelines. Not every factor is applicable in every situation, and the degree of importance of each factor varies depending on the type of work and individual circumstances. However, all relevant factors are considered in making a determination, and no one factor is decisive. It does not matter that a written agreement may take a position with regard to any factors or state that certain factors do not apply, if the facts indicate otherwise. The 20 factors indicating whether an individual is an employee or an independent contractor are:

- ***Instructions.*** An employee must comply with instructions about when, where, and how to work. Even if no instructions are given, the control factor is present if the employer has the right to control how the work results are achieved.
- ***Training.*** An employee may be trained to perform services in a particular manner. Independent contractors ordinarily use their own methods and receive no training from the purchasers of their services.
- ***Integration.*** An employee's services are usually integrated into the business operations because the services are important to the success or continuation of the business. This shows that the employee is subject to direction and control.
- ***Services Rendered Personally.*** An employee renders services personally. This shows that the employer is personally interested in the methods as well as the results.
- ***Hiring Assistants.*** An employee works for an employer who hires, supervises, and pays workers. An independent contractor can hire, supervise, and pay assistants under a contract that requires him or her to provide materials and labor and to be responsible only for the result.
- ***Continuing relationship.*** An employee generally has a continuing relationship with an employer. A continuing relationship may exist even if work is performed at recurring although irregular intervals.
- ***Set hours of work.*** An employee usually has set hours of work established by an

employer. An independent contractor generally can set his or her own work hours.

- ***Full-time required.*** An employee may be required to work or be available full-time. This indicates control by the employer. An independent contractor can work when and for whom he or she chooses.
- ***Work done on premises.*** An employee usually works on the premises of an employer, or works on a route or at a location designated by an employer.
- ***Order or sequence set.*** An employee may be required to perform services in the order or sequence set by an employer. This shows that the employee is subject to direction and control.
- ***Reports.*** An employee may be required to submit reports to an employer. This shows that the employer maintains a degree of control.
- ***Payments.*** An employee is paid by the hour, week, or month. An independent contractor is usually paid by the job or on a straight commission.
- ***Expenses.*** An employee's business and travel expenses are generally paid by an employer. This shows that the employee is subject to regulation and control.
- ***Tools and materials.*** An employee is normally furnished significant tools, materials, and other equipment by an employer.
- ***Investment.*** An independent contractor has a significant investment in the facilities he or she uses in performing services for someone else.
- ***Profit or loss.*** An independent contractor can make a profit or suffer a loss.
- ***Works for more than one person or firm.*** An independent contractor is generally free to provide his or her services to two or more unrelated persons or firms at the same time.
- ***Offers services to general public.*** An independent contractor makes his or her services available to the general public.
- ***Right to fire.*** An employee can be fired by an employer. An independent contractor cannot be fired so long as he or she produces a result that meets the specifications of the contract.
- ***Right to quit.*** An employee can quit his or her job at any time without incurring liability. An independent contractor usually agrees to complete a specific job and is

responsible for its satisfactory completion, or is legally obligated to make good for failure to complete it.

Appendix G

Draft Implementing Letters

December 1, 2005 Draft

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The Honorable Joseph F. Murphy, Jr., Chair
Standing Committee on Rules of Practice and Procedure
County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

Dear Mr. Chairman: **R**

On the recommendation of the Study Group on Recalled Judges, chaired by the Honorable John C. Eldridge, the Court of Appeals asks the Rules Committee to draft, for the consideration of the Court, rule changes that would make recalled judges who are willing to sit at least 50% of the 246 days used for computation of a *per diem* under Code, Courts and Judicial Proceedings Article § 1-302, subject to all provisions of the Maryland Code of Judicial Conduct and the financial disclosure requirement.

A copy of the Interim Report of the **A** Study Group is enclosed for information.

Very truly yours,

Robert M. Bell

ENCLOSURE

cc w/o encl.

The Hon., The Court of Appeals
Hon. Charlotte M. Cooksey
Study Group on Recalled Judges
Elizabeth Buckler Veronis, Esq.

F

T

December 1, 2005 Draft

D

Frank V. Broccolina
State Court Administrator
Maryland Judiciary Center
580 Taylor Avenue
Annapolis, Maryland 21401

Dear Mr. Broccolina:

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On the recommendation of the Study Group on Recalled Judges, chaired by the Honorable John C. Eldridge, and with the concurrence of the Court of Appeals, I am asking you to ensure that the Administrative Office of the Courts transmits to the Judicial Institute, at appropriate intervals, information allowing timely dissemination of information about the Institute's educational programs to recalled judges.

This may necessitate some change in the forms, such as allowing recalled judges to indicate a willingness to have home addresses or other private information released for such purposes.

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Please advise the Court and the Study Group of the arrangements, when made.

Very truly yours,

Robert M. Bell

F

cc: The Hon., The Court of Appeals
Study Group on Recalled Judges
Debra L. Kaminski
Elizabeth Buckler Veronis, Esq.
Frederick C. Williams, Esq.

T

December 1, 2005 Draft

D

Theresa Thomas
Court Information Office
Murphy Courts of Appeal Building
361 Rowe Boulevard
Annapolis, Maryland 21401

R

RE: Recalled Judges

Dear Ms. Thomas:

On the recommendation of the Study Group on Recalled Judges, chaired by the Honorable John C. Eldridge, and with the concurrence of the Court of Appeals, I am asking you to advise the Study Group on the feasibility of allowing recalled judges access to the Judiciary's intranet for purposes of accessing educational materials relevant to providing judicial services when recalled.

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Very truly yours,

Robert M. Bell

cc: The Hon., The Court of Appeals
Study Group on Recalled Judges
Sally W. Rankin
Elizabeth Buckler Veronis, Esq.

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December 1, 2005 Draft

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Phillip Braxton
Director
Judicial Information Systems
2661 Riva Road
Suite 900
Annapolis, Maryland 21401

Dear Mr. Braxton: **R**

On the recommendation of the Study Group on Recalled Judges, chaired by the Honorable John C. Eldridge, and with the concurrence of the Court of Appeals, I am asking the Judicial Information Systems to establish a process whereby judges recalled for judicial service may have private electronic mail addresses listed, in addition to governmental addresses, if any, which may be continued.

This will necessitate transmittal, **A** from time to time, of information about recalled judges and, to that end, I ask Frank V. Broccolina to coordinate with you.

Please advise the Court and the Study Group of the arrangements, when made.

Very truly yours,

Robert M. Bell

F

cc: The Hon., The Court of Appeals
Study Group on Recalled Judges
Frank V. Broccolina
Debra L. Kaminski
Elizabeth Buckler Veronis, Esq.

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