

## Maryland Judicial Ethics Committee

**Opinion Request Number:** 2005-21

**Date of Issue:** March 17, 2006

Published Opinion     Unpublished Opinion     Unpublished Letter of Advice

### Recusal Required When Counsel is Judge's "Alter Ego"

**Issue:** Must a judge recuse himself or herself in contested cases in which a party before the judge is represented by the judge's "alter ego"?

**Answer:** Yes.

**Discussion:** Canon 2A of the Maryland Code of Judicial Conduct (2005) provides: "A judge shall avoid impropriety and the appearance of impropriety. ..."

Canon 3 of the Maryland Code of Judicial Conduct (2005) provides, in pertinent part:

A. GENERAL RESPONSIBILITIES. A judge shall perform the duties of judicial office diligently, impartially, and without having or manifesting bias or prejudice... .

#### D. RECUSAL.

(1) A judge shall recuse himself or herself from a proceeding in which the judge's impartiality might reasonably be questioned, including an instance when:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer... . [Emphasis added]

An alter ego in the requesting judge's jurisdiction is an attorney whom the judge has designated as someone to whom members of the bar can express complaints or concerns about that judge. The lawyer is usually a person well known to the judge and for whom the judge has a high professional regard. The designation of a lawyer as the alter ego of a judge is a public acknowledgment of a special relationship between the two.

The appointment is an announcement to the legal community that the designated lawyer has such a close relationship with the judge that he or she may freely discuss sensitive matters with the judge. Overtime the two may have exchanged many confidences. Some lawyers list their special status in biographical information.

Canon 3 of the Maryland Code of Judicial Conduct (2005) expresses the fundamental expectation of every litigant who appears before the court: that the judge will rule impartially, without bias. Any circumstance which suggests bias erodes confidence in the court. It is not enough that the judge proceed "without having...bias"; the judge must proceed "without ...manifesting bias".

Judges often believe they can remain impartial in matters where one party is represented by a friend, a former law clerk, or even a former associate. However, others may reasonably see such a relationship as creating a bias in favor of that attorney. The degree of that perceived bias may depend on the nature of the litigation and whether a jury is the finder of fact or the case is one in which arguments of counsel may be paramount. The judge may conclude that recusal is necessary pursuant to Canon 3D: "A judge shall recuse himself or herself from a proceeding in which the

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judge's impartiality might reasonably be questioned ... .”

When the relationship is so close that it creates a reasonable appearance of bias, and that bias exists, failing to recuse creates the appearance of impropriety.

“Determining whether recusal is required to avoid the appearance of impropriety may often be a difficult task. A high level of confidence in one’s ability to be fair and impartial may actually interfere with the proper assessment of the problem of appearance of impropriety. ...” *In re Turney*, 311 Md. 246, 253 (1987).

The very nature of the “alter ego” relationship manifests a bias that requires recusal. The apparent bias of the judge in favor of the alter ego has been publicly announced. Opposing counsel could never be absolutely certain that the judge’s rulings were entirely neutral, and few *pro se* litigants, aware of the relationship, would believe that they received a fair hearing. Confidence in the court generally would be diminished.

**Application:** The Judicial Ethics Committee cautions that this opinion is applicable only prospectively and only to the conduct of the requestor described in this opinion, to the extent of your compliance with this opinion. Omission or misstatement of a material fact in the written request for opinion negates reliance on this opinion.

Additionally, this opinion should not be considered to be binding indefinitely. The passage of time may result in amendment to the applicable law and/or developments in the area of judicial ethics generally or in changes of facts that could affect the conclusion of the Committee. If you engage in a continuing course of conduct, you should keep abreast of developments in the area of judicial ethics and, in the event of a change in that area or a change in facts, submit an updated request to the Committee.