

IN THE COURT OF APPEALS OF MARYLAND

R U L E S O R D E R

The Judicial Ethics Committee and this Court's Standing Committee on Rules of Practice and Procedure jointly having submitted to the Court of Appeals the Report of the Judicial Ethics Committee and One Hundred Fifty-Third Report of the Rules Committee, transmitting thereby the proposed rescission of current Rules 16-813 and 16-814 and the adoption in their place of new Rules 16-812.1 (Judicial Ethics Committee), 16-813 (Maryland Code of Judicial Conduct), and 16-814 (Maryland Code of Conduct for Judicial Appointees) of the Maryland Rules of Procedure; proposed amendments to Rules 4-327, 5-605, 16-815, 16-816, and 17-105 of the Maryland Rules of Procedure; and proposed amendments to Rules 3.5 and 8.2 of the Maryland [Lawyers'] Rules of Professional Conduct, all as set forth in that Report published in the *Maryland Register*, Vol. 31, Issue 15, pages 1151 - 1181 (July 23, 2004); and

This Court having considered at an open meeting, notice of which was posted as prescribed by law, all of the proposed rules changes, together with the comments received, and making certain deletions and additions to the proposed rules changes on its own

motion, it is this 2nd of December, 2004

ORDERED, by the Court of Appeals of Maryland, that current Rules 16-813 and 16-814 be, and they are hereby, rescinded, effective July 1, 2005; and it is further

ORDERED that new Rules 16-812.1, 16-813, and 16-814 be, and they are hereby, adopted in the form attached to this Order; and it is further

ORDERED that amendments to Rules 4-327, 5-605, 16-815, 16-816, and 17-105 and Rules 3.5 and 8.2 in Appendix: Maryland Rules of Professional Conduct be, and they are hereby, adopted in the form previously published; and it is further

ORDERED that new Rules 16-812.1, 16-813, and 16-814 shall take effect on July 1, 2005 and that new Rule 16-813 (Maryland Code of Judicial Conduct) shall govern the conduct of judges from and after said date and new Rule 16-814 (Maryland Code of Conduct for Judicial Appointees) shall govern the conduct of judicial appointees from and after said date; provided, however, that the Maryland Code of Judicial Conduct set forth in current Rule 16-813 shall continue in full force and effect and shall govern the conduct of judges until July 1, 2005, and judges shall continue on and after July 1, 2005 to be subject to discipline for

violations of that Code occurring prior to July 1, 2005; and further provided that the Code of Conduct for Judicial Appointees set forth in current Rule 16-814 shall continue in full force and effect and shall govern the conduct of judicial appointees until July 1, 2005, and judicial appointees shall continue on and after July 1, 2005 to be subject to discipline for violations of that Code occurring prior to July 1, 2005; and it is further

ORDERED that all other rules changes hereby adopted by this Court shall govern the courts of this State and all parties and their attorneys in all actions and proceedings, and shall take effect and apply to all actions commenced on or after July 1, 2005 and insofar as practicable, to all actions then pending; and it is further

ORDERED that a copy of this Order be published in the next issue of the *Maryland Register*.

/s/ Robert M. Bell
Robert M. Bell

/s/ Irma S. Raker
Irma S. Raker

/s/ Alan M. Wilner
Alan M. Wilner

/s/ Dale R. Cathell
Dale R. Cathell

/s/ Glenn T. Harrell, Jr.
Glenn T. Harrell, Jr.

/s/ Lynne A. Battaglia
Lynne A. Battaglia

/s/ Clayton Greene, Jr.
Clayton Greene, Jr.

Filed: December 2, 2004

/s/ Alexander L. Cummings
Clerk
Court of Appeals of Maryland

MARYLAND RULES OF PROCEDURE
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS
CHAPTER 800 - MISCELLANEOUS

ADD new Rule 16-812.1, as follows:

Rule 16-812.1. JUDICIAL ETHICS COMMITTEE

(a) Definitions

In this Rule the following definitions apply except as expressly otherwise provided or as necessary implication requires:

(1) Committee

"Committee" means the Judicial Ethics Committee.

(2) Ethics Provision

"Ethics provision" means:

(A) a provision of Code, State Government Article, Title 15, Subtitle 5 or 6;

(B) as to a judge, also a provision of the Maryland Code of Judicial Conduct; and

(C) as to a judicial appointee as defined in Rule 16-814, also a provision of the Maryland Code of Conduct for Judicial Appointees.

(3) State Official in Judicial Branch

"State official in the Judicial Branch" means an individual who is in the Judicial Branch and is a State official, as defined in Code, State Government Article, §15-102.

(b) Creation

There is a Judicial Ethics Committee.

(c) Composition

The Committee consists of nine members appointed by the Chief Judge of the Court of Appeals. Of the nine members:

(1) one shall be a judge of the Court of Special Appeals;

(2) two shall be circuit court judges;

(3) two shall be judges of the District Court;

(4) one shall be a judge of an orphans' court;

(5) one shall be a clerk of a circuit court;

(6) one shall be a judicial appointee as defined in Rule 16-814; and

(7) one shall not be a judge or other officer or employee of the Judicial Branch of the State government or a lawyer.

(d) Term

(1) The term of a member is three years and begins on July 1.

(2) The terms of the members shall be staggered so that the terms of three members expire each year.

(3) At the end of a term, a member continues to serve until a successor is appointed.

(4) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed.

(5) A member appointed on or after July 1, 2005, may not serve more than two consecutive three-year terms.

(e) Chair and Vice Chair

The Chief Judge of the Court of Appeals shall designate one judicial member as the Chair of the Committee and one judicial member as the Vice Chair. In the absence or disability of the Chair or upon an express delegation of authority by the Chair, the Vice Chair shall have the authority and perform the duties of the Chair.

(f) Meetings

The Committee shall meet at the times and places that the Chair directs.

(g) Quorum

The presence of a majority of the members then serving constitutes a quorum for the transaction of all business other than adjournment of a meeting for lack of a quorum.

(h) Committee Staff

The Committee shall have staff as the State Court Administrator directs.

(i) Duties

In addition to its other duties imposed by law, the Committee:

(1) shall give advice, as provided in this Rule, with respect to the application or interpretation of the Maryland Code of Judicial Conduct and the Maryland Code of Conduct for Judicial Appointees;

(2) is designated as the body to give advice with respect to

the application or interpretation of any provision of Code, State Government Article, Title 15, Subtitles 5 and 6, to a State official in the Judicial Branch;

(3) shall review timely appeals from the State Court Administrator's decision not to extend, under Rule 16-815 or 16-816, the period for filing a financial disclosure statement;

(4) shall determine, under Rule 16-815 f or Rule 16-816 g, whether to allow a judge or judicial appointee to correct a deficiency as to a financial disclosure statement or to refer the matter, as to a judge, to the Commission on Judicial Disabilities or, as to a judicial appointee, to the State Ethics Commission; and

(5) shall submit to the Court of Appeals recommendations for necessary or desirable changes in any ethics provision.

(j) Opinions and Letters of Advice

(1) Requester

A request for the opinion of the Committee may be made only by:

(A) a State official in the Judicial Branch, as to the proper interpretation of an ethics provision as applied to that State official; or

(B) the Chief Judge of the Court of Appeals, as to the proper interpretation of an ethics provision.

(2) Form of Request

Each request for an opinion of the Committee shall:

(A) be in writing;

(B) describe the act or activity about which the opinion is requested;

(C) include all documentation or other information necessary for the Committee to perform its function, which may include citation to rules, statutes, and published opinions of the Committee that the requester believes to be relevant to the request; and

(D) include an address to which the Committee shall direct correspondence.

(3) Opinion

The Committee may render an opinion, in writing, with regard to any request made under this Rule and shall decide whether an opinion is to be published or unpublished. The Chair shall cause to be prepared an edited version of each opinion designated to be published, in which the identity and specific court or geographical location of the requester and the identity of other persons mentioned in the opinion shall not be disclosed and shall have the opinion published in the manner that the State Court Administrator deems proper.

(4) Letter of Advice

If the Chair decides that the full Committee cannot provide a timely written opinion or that prior opinions of the Committee render full Committee review unnecessary, a panel of not less than three members appointed by the Chair may issue a

written letter of advice, which shall not be published and shall have no precedential effect.

(5) Protection from a Charge of Violation

A State official in the Judicial Branch who requests an opinion as to application of an ethics provision and is in compliance with an opinion of, or letter of advice issued for, the Committee is protected from a charge of violation of that ethics provision.

Committee note: The Judicial Ethics Committee noted that, given the binding effect of opinions, they generally should be issued only to a State official in the Judicial Branch requesting advice as to the official's own conduct. This practice would avoid comment either on hypothetical conduct or conduct incompletely or inaccurately described. However, there may be instances, such as those in which an opinion would affect numerous State officials in the Judicial Branch or the implementation of administrative duties, that make it appropriate to have a mechanism for requesting an interpretation of an ethics provision but not an opinion as to its application. Therefore, language in former Maryland Code of Judicial Conduct (1987), Canon 7 suggesting that persons other than a State official in the Judicial Branch could request an opinion has been omitted, but a provision for the Chief Judge of the Court of Appeals to request guidance on interpretation has been added. The addition is patterned on the practice for requesting an opinion from the Attorney General.

(6) Filing; Confidentiality

The Chair shall file with the State Court Administrator every opinion of, and letter of advice issued for, the Committee. A request and the letter of advice or the opinion, other than the edited version designated to be published, filed in response are confidential and, unless otherwise directed by the Court of Appeals or required by law, are not public information.

Cross reference: See Rule 16-813 (Maryland Code of Judicial Conduct) and Rule 16-814 (Maryland Code of Conduct for Judicial Appointees).

Source: This Rule is derived from former Maryland Code of Judicial Conduct (1987), Canon 7, as it was set forth in former Rule 1231 (renumbered Rule 16-813 by Rules Order dated January 18, 1996, effective July 1, 1996).

MARYLAND RULES OF PROCEDURE
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS
CHAPTER 800 - MISCELLANEOUS

ADD new Rule 16-813, as follows:

Rule 16-813. MARYLAND CODE OF JUDICIAL CONDUCT

Preamble

It is fundamental to our legal system that our laws be interpreted by a competent, fair, honorable, and independent judiciary. Such a judiciary is essential to the American concept of justice. Intrinsic to all sections of this Code are the precepts that, individually and collectively, judges must honor and respect the judicial office as a public trust and strive to enhance and maintain public confidence in our legal system. A judge, as arbiter of facts and law for the resolution of disputes, is a highly visible symbol of government under the rule of law.

This Code sets forth basic standards for the conduct of all judges and provides guidance in establishing and maintaining high standards of judicial and personal conduct.

This Code consists of a Terminology section, Canons, which set forth specific rules of conduct, and Comments, which provide guidance on the purpose and meaning of the Canons but are not intended as statements of additional rules.

When "shall" or "shall not" is used in the text of a Canon, it is intended to impose a binding obligation, the violation of which can result in disciplinary action. When "should" or "should not" is used, the text is intended as hortatory and as a statement of what is or is not appropriate conduct but not as a binding obligation under which a judge may be disciplined. When "may" is used, it denotes permissible discretion or, depending on the context, refers to action that is not covered by specific prohibitions.

Even as to binding obligations, however, it is not intended that every transgression result in disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, should depend on factors such as the seriousness of the transgression, whether the transgression is isolated or part of a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.

The Canons are rules of reason that should be applied in the context of all relevant circumstances and in a manner that is consistent with constitutional requirements, statutes, other court rules, and decisional law. This Code should be construed in a way that neither infringes on the essential independence of judges in making judicial decisions nor discourages candidates from seeking judicial office.

This Code includes a structure for regulating conduct through disciplinary agencies, when appropriate. It is not

intended to be a basis for civil liability or criminal prosecution. This Code should not be invoked for mere tactical advantage in a proceeding.

In interpreting this Code, attention should be given to the opinions of the Judicial Ethics Committee and, if appropriate, the Committee should be asked for a written letter of advice or a binding opinion.

Committee note: This Code replaces the Maryland Code of Judicial Conduct originally adopted by Rules Order dated November 21, 1986, effective July 1, 1987, as amended from time to time ("Maryland Code (1987)"). This Code is derived from the Maryland Code (1987) and the Model Code of Judicial Conduct adopted by the American Bar Association in 2000, with amendments in August 2003. The derivation of particular provisions of this Code is described in greater detail in the Source Note at the end of this Code.

The Judicial Ethics Committee has published opinions on issues such as a judge owning commercial real estate (permissible only if no appearance of impropriety would result), accepting an expense-paid trip, and granting a stet or probation conditioned on a criminal defendant making a monetary donation. Administrative Orders of the Chief Judge of the Court of Appeals also may provide guidance. For example, as to the anti-nepotism policy of the Judicial Branch, see the Orders dated October 3, 1996 and January 31, 1997.

Terminology

Terms explained below are noted in boldface type in the Canons and Comments where they appear.

In this Code the following definitions apply except as expressly otherwise provided or as necessary implication requires:

(a) **Fiduciary**

"**Fiduciary**" includes administrator, attorney-in-fact by power of attorney, executor, guardian, personal representative, and trustee.

Cross reference: See Canons 3D (1) (c) and (2) and 4E. For a definition of "guardian," see Rule 1-202 (j).

(b) **Gift**

"**Gift**" has the meaning stated in Code, State Government Article, §15-102.

Cross reference: See Canon 4D (5).

(c) **Honorarium**

"**Honorarium**" has the meaning stated in Code, State Government Article, §15-102.

(d) **Impartial, Impartiality, or Impartially**

"**Impartial,**" "**impartiality,**" or "**impartially**" denotes absence of bias or prejudice in favor of, or against, a party or class of parties, as well as maintaining an open mind in considering each issue that is or may come before the judge.

Cross reference: See Canons 2A; 3A, B (9), and D (1); 4A (1); and 5B (1)(a) and (d).

(e) Knowingly, Knowledge, Known, or Knows

"Knowingly," "knowledge," "known," or "knows" means actual knowledge of the fact in question. Actual knowledge may be inferred from circumstances.

Cross reference: See Canons 3D (1)(a), (c), and (d)(i), (ii), (iii), and (iv) and F (2) and (3) and 5B (1)(e).

(f) Member of Judge's Family

"Member of the judge's family" means a spouse, child, grandchild, parent, grandparent, or other relative or individual with whom a judge maintains a close familial relationship.

Cross reference: See Canons 3D (1)(c) and 4E (1)(b) and (d) and G (1).

(g) Member of Judge's Household

"Member of the judge's household" has the meaning stated in Code, State Government Article, §15-102 for "member of household."

Cross reference: See Canons 3D (2) and 4D (5).

(h) Political Organization

"Political organization" means a political party or other group, the principal purpose of which is to further the election or appointment of one or more candidates to political office.

Cross reference: See Canon 5B (1)(b) and (c).

(i) Require

"Require," in the context that a judge **"require"** certain conduct of others, means that the judge is to take reasonable steps to direct and control the conduct of those persons.

Cross reference: See Canon 3B (3), (5), (8), and (11) and C (2).

(j) Significant Financial Interest

(1) **"Significant financial interest"** means ownership of:

(A) an interest as the result of which the owner has received within the past three years, is currently receiving, or in the future is entitled to receive, more than \$1,000 per year;

(B) more than 3% of a business entity; or

(C) a security of any kind that represents, or is convertible into, more than 3% of a business entity.

(2) In applying this definition:

(A) ownership of an interest in a mutual or common investment fund that holds a security is not ownership of the security unless:

(i) the judge participates in the management of the fund;

or

(ii) there is before the judge a proceeding that could substantially affect the value of the interest, or such proceeding is imminent;

(B) ownership of a government security is not a **significant financial interest** in the issuer unless there is before the judge a proceeding that could substantially affect the value of the security, or such proceeding is imminent;

(C) neither a deposit in a financial institution nor a proprietary interest such as or similar to that of a depositor in a mutual savings association, member in a credit union, or policy

holder in a mutual insurance company is a **significant financial interest** in the entity unless there is before the judge a proceeding that could substantially affect the value of the deposit or interest, or such proceeding is imminent; and

(D) an ownership interest in a security held by a charitable, civic, educational, fraternal or sororal, or religious organization will not be imputed to a judge merely because the judge or the judge's child, parent, or spouse is an adviser to or director or officer of, or otherwise actively participates in, the organization.

Cross reference: See Canon 3D (1)(c) and (d)(iii).

(k) Third Degree of Relationship

"Third degree of relationship" means the relationship between a judge and the following individuals: a great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, or niece.

Cross reference: See Canon 3D (1)(d).

CANON 1

Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge shall observe high standards of conduct so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

COMMENT

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depend in turn upon their acting without fear or favor. A judiciary of integrity is one in which judges are known for their fairness, honesty, probity, soundness of character, and uprightness. An independent judiciary is one free of inappropriate outside influence. Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the **impartiality** of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

CANON 2

Avoidance of Impropriety and the Appearance of Impropriety

A. A judge shall avoid impropriety and the appearance of impropriety. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the **impartiality** and integrity of the judiciary.

COMMENT

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on his or her conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. Examples are the restrictions on a judge's speech imposed by Canon 3B (8) and (9) that are indispensable to the maintenance of the **impartiality**, independence, and integrity of the judiciary.

The obligation to avoid impropriety and the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the obligation is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in this Code. Actual improprieties under this standard include violations of law, other specific provisions of this Code, or other court rules. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with competence, **impartiality**, and integrity is impaired. See also the Comment to Canon 2C.

B. A judge shall not allow judicial conduct to be improperly influenced or appear to be improperly influenced by a family, political, social, or other relationship or by an employment

offer or opportunity. A judge shall not lend or use the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence judicial conduct. A judge shall not testify voluntarily as a character witness.

COMMENT

Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for a judge to allude to his or her judgeship to gain a personal advantage, such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, judicial letterhead must not be used for conducting a judge's personal business.

A judge also must avoid lending or using the prestige of judicial office for the advancement of the private interests of others. For example, a judge must not use the judge's judicial position to gain advantage in a civil suit involving a **member of the judge's family**. As to the acceptance of awards, see Canon 4D (5)(c) and the accompanying Comment.

Although a judge should be sensitive to possible abuse of the prestige of office, a judge may serve as a reference or provide a letter of recommendation based on the judge's own **knowledge**. A judge must not initiate, however, a personal communication of information to a sentencing judge or a corrections or probation officer but may provide to such officials information for the record in response to a formal request.

Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration.

A judge must not testify voluntarily as a character witness because to do so may lend the prestige of judicial office in support of the party for whom the judge testifies. A judge may, however, testify when properly subpoenaed.

Committee note: The Judicial Ethics Committee has held that a judge's judicial and non-judicial activities should not raise questions as to improper favoritism, partiality, or influence due to familial or social connections, indebtedness (such as might arise through referral of business to family or friend), political endorsement, acceptance of gifts, fund-raising, or entrepreneurial activities.

C. A judge shall not hold membership in any organization that practices invidious discrimination on the basis of national origin, race, religion, or sex.

COMMENT

Membership of a judge in an organization that practices invidious discrimination on the basis of national origin, race, religion, or sex gives rise to perceptions that the judge's **impartiality** is impaired. It is therefore inappropriate for a judge to continue to hold membership in an organization that the judge **knows**, or reasonably should **know**, practices and will continue to practice such invidious discrimination so as to give rise to the perception that the judge's **impartiality** is impaired. Membership in an organization would not be prohibited unless that membership would reasonably give rise to a perception of partiality. Certain organizations - such as congregational brotherhoods, sisterhoods, or bowling leagues - may well be restricted to individuals belonging to the particular congregation and therefore to those sharing a particular religious belief, but it is unlikely that membership in such an organization would cause people reasonably to believe that the judge is partial.

Whether an organization practices and will continue to practice that kind of invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined merely from an examination of an organization's current membership rolls but may depend on (1) the nature and purpose of the organization, (2) any restrictions on membership, (3) the history of the organization's selection of members, and (4) other relevant factors such as that the organization is dedicated to the preservation of cultural, ethnic, or religious values of legitimate common interest to its members, or that it is, in fact and effect, an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership, on the basis of national origin, race, religion, or

sex, individuals who otherwise would be admitted to membership.

Although Canon 2C relates only to membership in organizations that invidiously discriminate on the basis of national origin, race, religion, or sex, a judge's membership in an organization that engages in any discriminatory membership practices prohibited by the law of the jurisdiction also violates Canon 2A and gives the appearance of impropriety. In addition, it would be a violation of Canon 2 for a judge to arrange a meeting at a club that the judge **knows** practices invidious discrimination on the basis of national origin, race, religion, or sex, in its membership or other policies, or for the judge to use such club regularly. Moreover, public manifestation by a judge of the judge's **knowing** approval of invidious discrimination on any basis gives the appearance of impropriety under Canon 2 and diminishes public confidence in the **impartiality** and integrity of the judiciary, in violation of Canon 2A.

When a judge learns that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under Canon 2C or under Canon 2A, the judge is permitted, in lieu of resigning, to make immediate efforts to have the organization discontinue its invidiously discriminatory practices, but is required to suspend participation in all other activities of the organization. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible (and in all events within two years of the judge's first learning of the practices), the judge is required to resign immediately from the organization.

CANON 3

Performance of Judicial Duties

In the performance of judicial duties, the following standards apply.

A. GENERAL RESPONSIBILITIES.

A judge shall perform the duties of judicial office diligently, **impartially**, and without having or manifesting bias or prejudice, including bias or prejudice based on age, disability, national origin, race, religion, sex, sexual orientation, or socioeconomic status.

COMMENT

A judge must perform judicial duties fairly and **impartially**. A judge who manifests bias of any kind in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial. For example, a judge must refrain from comment, gesture, or other conduct that could reasonably be perceived as sexual harassment.

B. ADJUDICATIVE RESPONSIBILITIES.

(1) A judge shall be faithful to the law and maintain professional competence in it.

(2) A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

(3) A judge shall **require** order and decorum in proceedings

before the judge.

(4) A judge shall be dignified.

(5) A judge shall be courteous to and patient with jurors, lawyers, litigants, witnesses, and others with whom the judge deals in an official capacity and shall **require** similar conduct of lawyers and of court officials, staff, and others subject to the judge's direction and control.

COMMENT

The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Judges can be businesslike and efficient while being deliberate and patient.

(6) (a) A judge shall accord to every person who has a legal interest in a proceeding pending before the judge, or that person's lawyer, the right to be heard according to law.

(b) While presiding over a proceeding, a judge shall neither initiate, permit, or consider *ex parte* communications nor consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding, except as otherwise provided in Canon 3B (6).

(c) *Ex parte* communications that relate to scheduling or other administrative purposes or emergencies and not to substantive matters or issues on the merits are authorized, if: (i) circumstances require; (ii) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the communication; (iii) the judge makes provision

promptly to notify all other parties as to the substance of the *ex parte* communication; and (iv) the judge affords the parties reasonable opportunity to respond.

(d) With the consent of the parties, a judge may confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(e) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding if the judge: (i) makes provision promptly to notify all of the parties as to the expert consulted and the substance of the advice; and (ii) affords the parties reasonable opportunity to respond.

(f) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities and with other judges.

(g) A judge may initiate or consider an *ex parte* communication when expressly authorized by law to do so.

COMMENT

The prohibition against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted.

To the extent practicable, all parties or their lawyers must be included in communications with a judge.

Whenever Canon 3B (6) requires the presence of, or notice to, a party, it is the party's lawyer or, if the party is unrepresented, the party who is to be present or to whom notice is to be given.

An appropriate and often desirable procedure for a court to obtain the advice of a disinterested expert on legal issues is to invite the expert to file a brief *amicus curiae*.

Canon 3B (6) allows for limited *ex parte* communication to facilitate scheduling and other administrative purposes and to accommodate emergencies. Even then, however, a judge must discourage *ex parte* communication and allow it only if all of the criteria stated in Canon 3B (6) clearly are met. A judge must disclose to all parties all *ex parte* communication described in Canon 3B (6)(c) and (e) regarding a proceeding pending or impending before the judge.

A judge must not independently investigate facts in a case and must consider only the evidence presented, except matters of which the court properly can take judicial notice.

A judge may request a party to submit proposed findings of fact and conclusions of law if all of the other parties are apprised of the request and given an opportunity to respond to the proposed findings and conclusions.

A judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that Canon 3B (6) is not violated through law clerks or other personnel on the judge's staff.

If communication between a trial judge and appellate court with respect to a proceeding is permitted, a copy of all written communications and the substance of all oral communications should be provided to all parties.

(7) A judge shall dispose of the business of the court efficiently, fairly, and promptly.

COMMENT

Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials and litigants and their lawyers cooperate to that end.

(8) A judge shall abstain from public comment that relates to a proceeding pending or impending in any court and that might

reasonably be expected to affect the outcome of that proceeding or to impair the fairness of that proceeding and shall **require** similar abstention on the part of court personnel subject to the judge's direction and control. Canon 3B (8) does not prohibit a judge from making public statements in the course of official duties or from explaining for public information the procedures of the court.

COMMENT

"Court personnel" does not include the lawyers in a proceeding before a judge. The conduct of lawyers in this regard is governed by Rule 3.6 of the Maryland [Lawyers'] Rules of Professional Conduct.

(9) With respect to a case, controversy, or issue that is likely to come before the court, a judge shall not make a commitment, pledge, or promise that is inconsistent with the **impartial** performance of the adjudicative duties of the office.

COMMENT

Canon 3B (8) and (9) restrictions on a judge's speech are essential to the maintenance of the **impartiality**, independence, and integrity of the judiciary. A pending proceeding is one that has begun but not yet reached final disposition. An impending proceeding is one that is anticipated but not yet begun. The requirement that a judge abstain from public comment regarding a pending or impending proceeding continues during any appellate process and until final disposition.

(10) At the conclusion of a jury trial, the judge shall not communicate to the jury the judge's praise or criticism of the verdict but may thank the jurors for their public service.

COMMENT

Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and **impartial** in a subsequent case.

(11) A judge shall **require** lawyers in proceedings before the judge to refrain from manifesting, by word or conduct, bias or prejudice based upon age, disability, national origin, race, religion, sex, sexual orientation, or socioeconomic status. Canon 3B (11) does not preclude legitimate advocacy when such status or other similar factor is an issue in a proceeding.

(12) Unless recusal is appropriate, a judge shall hear and decide matters assigned to the judge.

Cross reference: As to court records, see Title 16, Chapter 1000 of the Maryland Rules. As to prohibitions against, and penalties for, improper disclosure or use of information by government officials and employees, see Code, State Government Article, §§15-507 and 15-903. As to civil and criminal provisions governing improper disclosure of information, see, e.g., Code, State Government Article, §§10-626 and 10-627 (public records) and Code, Tax-General Article, §13-1018 (tax information).

C. ADMINISTRATIVE RESPONSIBILITIES.

(1) A judge shall discharge the judge's administrative responsibilities without favoritism or nepotism and shall cooperate with other judges and court officials in the administration of court business.

(2) A judge shall **require** court officials, staff, and others subject to the judge's direction and control to observe the standards of diligence and fidelity that apply to the judge and to refrain from manifesting bias or prejudice in the performance

of their official duties.

(3) A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to ensure the prompt disposition of matters before those judges and the proper performance of their other judicial responsibilities.

(4) A judge shall not make unnecessary appointments and shall not approve compensation of appointees beyond the fair value of services rendered.

COMMENT

Consent by the parties to an appointment or an award of compensation does not relieve a judge of the obligation prescribed by Canon 3C (4).

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 or extra-judicial **knowledge** of a disputed evidentiary fact concerning the proceeding;

(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;

COMMENT

A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of Canon 3D (1)(b); a judge formerly employed by a governmental agency, however, should not participate in a proceeding if the judge's **impartiality** might reasonably be questioned because of such association.

(c) the judge **knows** that he or she, individually or as a **fiduciary**, or a **member of the judge's family**, has a **significant financial interest** in the subject matter in controversy or in a party to the proceeding;

COMMENT

There may be situations that involve a lesser financial interest but nonetheless require recusal because of the judge's own sense of propriety.

(d) the judge, the judge's spouse, an individual within the **third degree of relationship** to either of them, or the spouse of such an individual:

(i) is **known** to be a party to the proceeding or a director, officer, or trustee of a party;

(ii) is **known** to be acting as a lawyer in the proceeding;

COMMENT

The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of a judge is affiliated does not of itself require recusal of the judge. Under appropriate circumstances, the fact that "the judge's **impartiality** might reasonably be questioned" under Canon 3D (1),

or that the lawyer-relative is **known** by the judge to have an interest in the law firm that could be "substantially affected by the proceeding" under Canon 3D (1)(d)(iii), may require the judge's recusal.

(iii) is **known** by the judge to have a **significant financial interest** that could be substantially affected by the proceeding; or

(iv) is to the judge's **knowledge** likely to be a material witness in the proceeding; or

(e) the judge, while a judge or a candidate for judicial office, has made a public statement that commits, or appears to commit, the judge with respect to:

(i) an issue in the proceeding; or

(ii) the controversy in the proceeding.

(2) A judge shall keep informed about the judge's personal and **fiduciary** financial interests and shall make a reasonable effort to keep informed about the personal financial interests of each **member of the judge's household**.

COMMENT

Under Canon 3D (1), a judge must recuse himself or herself whenever the judge's **impartiality** might reasonably be questioned, regardless of whether any of the specific instances in Canon 3D (1) apply.

A judge must disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of recusal, even if the judge believes that there is no real basis for recusal.

By decisional law, the rule of necessity may override the rule of recusal. For example, a judge might be required to participate in judicial review of a judicial salary statute or

might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. When the rule of necessity does override the rule of recusal, the judge must disclose on the record the basis for possible recusal and, if practicable, use reasonable efforts to transfer the matter promptly to another judge.

E. NON-RECUSAL BY AGREEMENT.

If recusal would be required by Canon 3D, the judge may disclose on the record the reason for the recusal. If after disclosure of any reason for recusal other than as required by Canon 3D (1)(a), the parties and lawyers, out of the presence of the judge, all agree that the judge need not recuse himself or herself, and the judge is willing to participate, the agreement of the parties shall be incorporated in the record, and the judge may participate in the proceeding.

COMMENT

This procedure gives the parties an opportunity to waive the recusal if the judge agrees. The judge may comment on possible waiver but must ensure that consideration of the question of waiver is made independently of the judge. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, a judge may wish to have all parties and their lawyers sign a waiver agreement.

F. DISCIPLINARY RESPONSIBILITIES.

(1) A judge should take or initiate appropriate corrective measures with respect to the unprofessional conduct of another judge or a lawyer.

(2) If other corrective measures are not appropriate or, if attempted, were not successful, a judge shall inform the Commission on Judicial Disabilities of facts **known** to that judge that raise a substantial question as to another judge's fitness for office.

(3) If other corrective measures are not appropriate or, if attempted, were not successful, a judge shall inform the Attorney Grievance Commission of facts **known** to the judge that raise a substantial question as to a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.

(4) Acts of a judge required or permitted by Canon 3F (1), (2), or (3) shall be absolutely privileged.

COMMENT

Permitting a judge to take "corrective" measures gives the judge a wide range of options to deal with unprofessional conduct. Appropriate corrective measures may include direct communication with the judge or lawyer who is believed to have committed the violation or other direct action if available. There may be instances of professional misconduct that would warrant a private admonition or referral to a bar association counseling service.

CANON 4

Extra-Judicial Activities

A. EXTRA-JUDICIAL ACTIVITIES IN GENERAL.

A judge shall conduct all extra-judicial activities so that they do not:

- (1) cause a substantial question as to the judge's capacity to act **impartially** as a judge;
- (2) demean the judicial office; or
- (3) interfere with the proper performance of judicial duties.

COMMENT

Complete separation of a judge from extra-judicial activities is neither possible nor desirable. A judge should not become isolated from the judge's community.

An extra-judicial activity, however, may be perceived to reflect on judicial behavior. For example, an expression of bias or prejudice by a judge, even outside the judge's judicial activities, may cause a substantial question as to the judge's capacity to act **impartially** as a judge. Expressions that may do so include jokes or other remarks demeaning individuals on the basis of their age, disability, national origin, race, religion, sex, sexual orientation, or socioeconomic status. See Canon 2C and the accompanying Comment.

B. AVOCATIONAL ACTIVITIES.

Subject to other provisions of this Code, a judge may lecture, speak, teach, write, and otherwise participate in other extra-judicial activities.

COMMENT

A judge is in a unique position to contribute to the administration of justice, the legal system, and improvement of the law, including the revision of substantive and procedural law and improvement of criminal and juvenile justice. As time may permit, a judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law.

The phrase "subject to other provisions of this Code" is used in this and other sections of Canon 4, primarily in connection with a judge's charitable, civic, or governmental activities, to remind judges that use of permissive language in various sections of this Code does not relieve a judge from the other provisions of this Code that apply to the specific conduct.

Committee note: The Judicial Ethics Committee has cautioned that a judge who agrees to speak at a political club should schedule the speech so as not to be present for political discussions, be reasonably available to other groups with similar invitations, and not speak at fund-raising events.

The Judicial Ethics Committee has held that writing an introduction for a book was not using the judicial office for a private business.

C. CHARITABLE, CIVIC, AND GOVERNMENTAL ACTIVITIES.

(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.

COMMENT

As suggested in the *Reporter's Notes to the ABA Model Code of Judicial Conduct* (1990), the "administration of justice"

is not limited to "matters of judicial administration" but is broad enough to include other matters relating to the judiciary.

(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.

COMMENT

A judge may not accept a governmental appointment that could interfere with the effectiveness and independence of the judiciary, assume or discharge an executive or legislative power (Maryland Declaration of Rights, Article 8), or hold an "office" under the constitution or other laws of the United States or State of Maryland (Maryland Declaration of Rights, Articles 33 and 35).

Committee note: The Judicial Ethics Committee notes that the supremacy clause of U.S. Constitution Article IV may allow service in reserve components of the armed forces that otherwise might be precluded under this Code, such as service as a judge advocate or military judge. However, the Attorney General, rather than the Judicial Ethics Committee, traditionally has rendered opinions with regard to issues of dual or incompatible offices.

(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.

COMMENT

See the Comment to Canon 4B regarding use of the phrase

"subject to other provisions of this Code." As an example of the meaning of the phrase, a judge permitted under Canon 4C (4) to serve on the board of an organization may be prohibited from such service by, for example, Canon 2C or 4A, if the organization practices invidious discrimination or if service on the board otherwise causes a substantial question as to the judge's capacity to act **impartially** as a judge or as to service as an adviser.

(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.

COMMENT

The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine whether it is proper to continue a relationship with it. For example, in many jurisdictions, charitable organizations are more frequently in court now than in the past or make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

(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.

COMMENT

As a director, member, non-legal adviser, officer, or trustee of an organization that is devoted to the administration of justice, the legal system, or improvement of the law or for a not-for-profit charitable, civic, educational, fraternal or sororal, or religious organization, a judge may solicit membership and encourage or endorse membership efforts for the organization, as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fund-raising mechanism. Solicitation of funds and solicitation of memberships similarly involve the danger that the person solicited will feel obligated to respond favorably to the solicitor who is in a position of control or influence. A judge may be listed as a director, officer, or trustee of an organization but must not engage in direct, individual solicitation of funds or memberships

in person, by telephone, or in writing, for that organization, except in the following cases: (1) a judge may solicit, for funds or memberships, other judges over whom the judge does not exercise appellate or supervisory authority; (2) a judge may solicit, for membership in an organization described above, other persons if neither those persons nor persons with whom they are affiliated are likely to appear before the court on which the judge serves; and (3) a judge who is an officer of an organization described above may send a general membership solicitation mailing over the judge's signature.

Use of an organization's letterhead for fund-raising or membership solicitation does not violate Canon 4C (4) if the letterhead lists only the judge's name and office or other position in the organization. A judge's judicial office also may be listed if comparable information is listed for other individuals. A judge must make reasonable efforts to ensure that court officials, the judge's staff, and others subject to the judge's direction and control do not use or refer to their relationship with the judge to solicit funds for any purpose, charitable or otherwise.

Although a judge is not permitted to be a guest of honor or speaker at a fund-raising event, Canon 4 does not prohibit a judge from attending an event if otherwise consistent with this Code.

Cross reference: As to exemption for former judges approved for recall, see Canon 6C.

D. FINANCIAL ACTIVITIES.

(1) A judge shall not engage in business or financial dealings that:

- (a) reasonably would be perceived to violate Canon 2B; or
- (b) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves.

COMMENT

Canon 4D (1)(b) is necessary to avoid creating an appearance

of exploitation of office or favoritism and to minimize the potential for recusal. A judge also should discourage **members of the judge's family** from engaging in dealings that reasonably would appear to exploit the judge's judicial position. With respect to affiliation of relatives of the judge with law firms appearing before the judge, see the Comment to Canon 3D (1)(d) relating to recusal.

Participation by a judge in business and financial dealings is subject to the general prohibitions in Canon 4A against activities that cause a substantial question as to **impartiality**, demean the judicial office, or interfere with the proper performance of judicial duties. Such participation also is subject to the general prohibition in Canon 2 against activities involving impropriety or the appearance of impropriety and the prohibition in Canon 2B against misuse of the prestige of judicial office. In addition, a judge must maintain high standards of conduct in all of the judge's activities, as set forth in Canon 1. See the Comment to Canon 4B regarding use of the phrase "subject to other provisions of this Code."

(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.

Cross reference: As to exemption for former judges approved for recall, see Canon 6C.

(3) A judge shall manage investments and other financial interests to minimize the number of cases in which recusal would be required. As soon as practicable without serious financial detriment, a judge shall dispose of those financial interests that might require frequent recusal.

(4) A judge shall neither use nor disclose, in financial

dealings or for any other purpose not related to the judge's judicial duties, information that is acquired in his or her judicial capacity and that is confidential, privileged, or otherwise not part of the public record.

Cross reference: As to court records, see Title 16, Chapter 1000 of the Maryland Rules. As to prohibitions against, and penalties for, improper disclosure or use of information by government officials and employees, see Code, State Government Article, §§15-507 and 15-903. As to civil and criminal provisions governing improper disclosure of information, see, e.g., Code, State Government Article, §§10-626 and 10-627 (public records) and Code, Tax-General Article, §13-1018 (tax information).

(5) A judge shall not accept, and shall urge **members of the judge's household** not to accept, a bequest, favor, **gift**, or loan from anyone except for:

(a) contributions to a judge's campaign for judicial office that comply with Canon 5;

(b) a book, tape, or other resource material supplied by a publisher on a complimentary basis for official use, a **gift** incident to a public testimonial, or an invitation to a judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the administration of justice, the legal system, or improvement of the law;

(c) an award, benefit, or **gift** incident to the business, profession, or other separate activity of a spouse or other **member of the judge's household**, including an award, benefit, or **gift** for the use of both the household member and judge (as spouse or household member), if the award, benefit, or **gift** could

not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(d) ordinary social hospitality;

(e) a **gift** from a friend or relative, for a special occasion, such as an anniversary, birthday, or wedding, if the **gift** is fairly commensurate with the occasion and the friendship or relationship;

(f) a bequest, favor, **gift**, or loan from a relative or close personal friend whose appearance or interest in a case would in any event require a recusal under Canon 3D;

(g) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;

(h) a fellowship or scholarship awarded on the same terms and based on the same criteria applied to other applicants; or

(i) any other bequest, favor, **gift**, or loan if: (1) the donor or lender is not a person whose interests have come or are likely to come before the judge and (2) the judge reports, on the judge's financial disclosure form, all bequests, favors, **gifts**, and loans required under Rule 16-815 to be reported.

COMMENT

However innocently intended, favors or **gifts** from persons not in a judge's immediate family may create an appearance that the judge could be improperly beholden to the donor.

Similarly, a bequest, favor, **gift**, or loan to a **member of the judge's household** might be viewed as intended to influence

the judge. Therefore, a judge must inform those household members of the relevant ethical constraints on the judge in this regard and discourage those household members from violating the constraints. However, a judge cannot reasonably be expected to **know** or control all of the business and financial activities of all **members of the judge's household**.

Canon 4D (5)(b) and (i) governs, respectively, acceptance of an invitation to a law-related function and of an invitation paid for by an individual lawyer or group of lawyers.

A judge may accept a public testimonial, or a **gift** incident thereto, only if the donor is not an organization whose members comprise or frequently represent the same side in litigation, and the testimonial or **gift** complies with other provisions of this Code. See Canons 2B and 4A (1).

A **gift** that is made to a judge, or a **member of the judge's household**, and is excessive in value raises questions about the judge's **impartiality** and the integrity of the judicial office and might require recusal of the judge. See, however, Canon 4D (5)(f).

E. **FIDUCIARY** ACTIVITIES.

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

COMMENT

The Time for Compliance provision of this Code (Canon 6D) postpones the time for compliance with certain provisions of Canon 4E in some cases.

Committee note: Code, Estates and Trusts Article, §§5-105 (b)(5) and 14-104 prohibit a judge from serving as a personal representative or trustee for someone who is not a spouse or within the **third degree of relationship** (although a judge serving as trustee as of 12/31/69 is allowed to continue in that capacity). Neither the 1987 Maryland Code of Judicial Conduct nor any other Maryland law explicitly prohibits a judge from serving as any other type of **fiduciary** for anyone.

Cross reference: As to exemption for former judges approved for recall, see Canon 6C.

F. SERVICE AS ARBITRATOR OR MEDIATOR.

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

COMMENT

Canon 4F does not preclude a judge from participating in settlement conferences. If by reason of disclosure made during or as a result of a conference, a judge's **impartiality** might reasonably be questioned, the judge should not participate in the matter further. See Canon 3D (1).

Cross reference: As to exemption for former judges approved for recall, see Canon 6C.

G. PRACTICE OF LAW.

(1) Except as expressly allowed by Canon 4G, a judge shall not practice law. Notwithstanding this prohibition, a judge may act *pro se* in a matter involving the judge or the judge's interest and, if without compensation, may give legal advice to and draft or review documents for a **member of the judge's family**.

(2) (a) To the extent expressly allowed by law and subject to other applicable provisions of this Code, a part-time judge of an orphans' court may practice law.

Cross reference: See Code, Estates and Trusts Article, §2-109 for restrictions on the practice of law by a part-time judge of an orphans' court.

(b) A judge of an orphans' court shall avoid conduct whereby the judge uses or seems to use the judicial office to further success in the practice of law.

(c) A judge of an orphans' court shall not practice, or appear as an individual in a matter involving the judge or the judge's interest, in the court on which the judge serves, even when another judge is presiding.

COMMENT

Canon 4G (1) limits the practice of law in a representative capacity but not in a *pro se* capacity. A judge may act for himself or herself in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in so doing, a judge must not abuse the prestige of office for any reason, including advancement of an interest of the judge or the judge's family. See Canons 2B and 4C (1).

This Code allows a judge to give legal advice to, and draft legal documents for, a **member of the judge's family**. However,

except for a part-time orphans' court judge allowed to practice law, a judge must not receive any compensation from, or act as an advocate or negotiator for, a **member of the judge's family** in a legal matter.

H. COMPENSATION AND REIMBURSEMENT.

Unless otherwise prohibited by law, a judge may receive compensation and reimbursement of expenses for extra-judicial activities permitted by this Code if:

(1) the source of compensation or reimbursement does not give the appearance of impropriety;

(2) the compensation does not exceed a reasonable amount and does not exceed the amount a person who is not a judge ordinarily would receive for the same activity; and

(3) the expense reimbursement is limited to the actual cost of food, lodging, and travel reasonably incurred by a judge and, if appropriate to the occasion, by the judge's spouse or guest.

COMMENT

Acceptance of an "**honorarium**," as defined in Code, State Government Article, §15-102 (r), is governed by Code, State Government Article, §15-505. See Judicial Ethics Opinion No. 128 (issued February 2, 2000).

A judge must disclose financial matters such as debts or income, investments, or other assets, only to the extent required by Canon 4H, by Canon 3D or E, or by law. See Code, State Government Article, §15-610.

CANON 5

Political Activity

A. POLITICAL CONDUCT OF JUDGE WHO IS NOT CANDIDATE.

(1) A judge who is not a candidate for election or re-election to or retention in a judicial office shall not engage in any partisan political activity.

(2) (a) Except as otherwise provided in Canon 5A (2)(b), a judge shall resign when the judge becomes a candidate for a non-judicial office.

(b) A judge may continue to hold judicial office while a candidate for election to, or delegate in, a Maryland constitutional convention.

Committee note: Canon 5A (2) of the Model Code of Judicial Conduct adopted by the American Bar Association in 2000 allows a judge to serve as a state constitutional convention delegate if allowed by law. Such a delegate does not hold an "office," which Maryland Declaration of Rights, Article 33 would prohibit a judge from holding. See *Board v. Attorney General*, 246 Md. 417 (1967).

B. POLITICAL CONDUCT OF JUDGE WHO IS CANDIDATE.

(1) A judge who is a candidate for election or re-election to or retention in a judicial office may engage in partisan political activity allowed by law with respect to such candidacy, except that the judge:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the **impartiality**, independence, and integrity of the judiciary;

(b) shall not act as a leader or hold an office in a **political organization**;

(c) shall not make a speech for a candidate or **political organization** or publicly endorse a candidate for non-judicial office;

COMMENT

A judge does not publicly endorse a candidate for public office by having the judge's name on the same sample ballot.

(d) with respect to a case, controversy, or issue that is likely to come before the court, shall not make a commitment, pledge, or promise that is inconsistent with the **impartial** performance of the adjudicative duties of the office;

COMMENT

Canon 5B (1)(d) does not prohibit a candidate from making a commitment, pledge, or promise respecting improvements in court administration or the faithful and **impartial** performance of the duties of the office.

(e) shall not **knowingly** misrepresent his or her identity or qualifications, the identity or qualifications of an opponent, or any other fact; and

(f) shall not allow any other person to do for the judge what the judge is prohibited from doing.

(2) A candidate for a judicial office may respond to a personal attack or an attack on the candidate's record as long as the response does not violate Canon 5B (1).

Committee note: Canon 5A (1)(b) of the Model Code of Judicial Conduct adopted by the American Bar Association in 2000 ("ABA Code (2000)") probably is broad enough even to prohibit a judge from endorsing another judge who is also a candidate, public endorsement by one judicial candidate of another judicial candidate has long been permitted in Maryland. See Maryland Judicial Ethics Opinion No. 20 (issued 4/25/74).

ABA Code (2000), Canon 5A (1)(d), which bars attendance of a judge-candidate at political gatherings, is omitted as not consistent with Maryland Judicial Ethics Opinion No. 63 (issued 5/8/78), which recognized that "any potential opponents ... would clearly take advantage of this type of exposure [and] ... it is neither desirable nor necessary that you, as a candidate for election, be denied similar opportunity."

ABA Code (2000), Canon 5A (1)(e) and C (2) prohibits a judge from personally soliciting or accepting campaign funds or personally soliciting publicly stated support; however, a judge may establish "committees of responsible persons" to do these things for the judge. The Judicial Ethics and the Rules Committee believe that this prohibition may be too restrictive, since it puts a judge at a political disadvantage to active opposition. Maryland law does require all campaign funds to be publicly reported by the campaign treasurer.

The Judicial Ethics and the Rules Committee disagree with the proposition in ABA Code (2000), Canon 5A (3)(a), which states that family members of a judge should adhere to the same standards of political conduct as a judge who is a candidate for judicial office. The Committees believe that family members should be free to engage, in their own right, in political activity that is not related to the judge's office.

ABA Code (2000), Canon 5A (3)(b) requires that a judge prohibit public officials and employees subject to the judge's direction and control from doing for the judge what the judge is prohibited from doing. The Committees believe that this is redundant and may even imply that a judge must terminate the employment of an individual who does not follow the judge's admonitions - a result that may be unreasonable under the circumstances.

C. STATUS OF JUDGE OR LAWYER AS CANDIDATE.

"Candidate" applies to an individual seeking to be elected to or to retain a judicial office:

(1) as to a newly appointed judge, from the date of taking the oath of office until the general election pertaining to that judge's election or initial retention;

(2) as to any other incumbent judge, from the earlier of:

(a) the date two years prior to the general election pertaining to that judge's re-election or subsequent retention;

or

(b) the date on which a newly appointed judge to that court becomes a "candidate" in the same general election;

(3) as to a judge who is seeking election to another judicial office, the earlier of:

(a) the date on which the judge files a certificate of candidacy in accordance with Maryland election laws, but no earlier than two years prior to the general election for that office; or

(b) the date on which a newly appointed judge to that court becomes a "candidate" in the same general election; and

(4) as to a lawyer who is seeking a judicial office, the date on which the lawyer files a certificate of candidacy in accordance with Maryland election laws, but no earlier than two years prior to the general election for the office.

Committee note: Maryland Judicial Ethics Opinion No. 14 (issued 5/23/74) allows a judge to begin campaigning as a candidate immediately upon assumption of office. The longest possible campaign period would be one day less than three years. See Maryland Constitution, Article IV, §5. Maryland Judicial Ethics Opinion No. 34 (issued 7/7/75), which had allowed an incumbent judge to campaign for re-election only from January 1 of the year of the election, was found to be too restrictive, so Maryland

Judicial Ethics Opinion No. 57 (issued 11/28/77) changed the period to "times which are reasonable under the particular circumstances of each case." The Judicial Ethics Committee believed that the latter standard was too vague, and the Court of Appeals permitted an incumbent judge to campaign as soon as the preceding general election ended, which is a two-year period, or earlier if a newly appointed judge, who will be a running mate of the incumbent judge, already has become a candidate.

A judge should be permitted to engage in political activity regarding the judge's candidacy for judicial office only if the judge's intention to pursue that candidacy is clear. An incumbent judge's candidacy for election or re-election is fairly obvious, but a judge's intention to seek another judicial office is not as clear; therefore, the filing of a certificate of candidacy is required in the latter situation.

D. APPLICABILITY; DISCIPLINE.

A candidate who is a judge shall comply with Canon 5. A candidate who is a lawyer shall comply with Rule 8.2 of the Maryland Rules of Professional Conduct. A successful candidate and a judge who unsuccessfully sought a different judicial office are subject to judicial discipline for campaign conduct. An unsuccessful candidate who is a lawyer is subject to attorney discipline for campaign conduct.

Cross reference: See Rules 16-802 through 16-810 concerning judicial discipline and Rules 16-701 through 16-781 concerning attorney discipline.

CANON 6

Compliance

A. COURTS

This Code applies to each judge of the Court of Appeals, the Court of Special Appeals, a circuit court, the District Court, or an orphans' court.

B. CONSTRUCTION

Violation of any of the Canons by a judge may be regarded as conduct prejudicial to the proper administration of justice within the meaning of Maryland Rule 16-803 (j), as to the Commission on Judicial Disabilities.

Committee note: Whether a violation is or is not prejudicial conduct is to be determined by the Court of Appeals of Maryland. Maryland Constitution, Article IV, §4B gives that Court the authority to discipline any judge upon recommendation of the Commission on Judicial Disabilities. This disciplinary power is alternative to and cumulative with the impeachment authority of the General Assembly.

C. FORMER JUDGES

This Code, other than Canon 4C (Charitable, Civic, and Governmental Activities), D(2) (Financial Activities), E (**Fiduciary** Activities), and F (Service as Arbitrator or Mediator), applies to each former judge of one of those courts who is approved for recall for temporary service under Maryland Constitution, Article IV, §3A.

Cross reference: As to approval of a former judge for recall, see Code, Courts Article, §1-302.

D. TIME FOR COMPLIANCE

An individual to whom this Code becomes applicable shall comply immediately with all provisions of this Code except: Canon 2C (Avoidance of Impropriety and the Appearance of Impropriety), Canon 4D (2) (Financial Activities), and Canon 4E (**Fiduciary** Activities). The individual shall comply with Canons 2C and 4D (2) and E as soon as reasonably possible, and shall do so in any event as to Canon 2C within two years and as to Canon 4D (2) and E within one year.

Source: This Rule is derived in part from former Rule 1231, Maryland Code of Judicial Conduct, adopted by Rules Order dated November 21, 1986, effective July 1, 1987, as amended from time to time (renumbered Rule 16-813 by Rules Order dated January 18, 1996, effective July 1, 1996 and hereinafter referred to as "Maryland Code (1987)") and is in part new, patterned for the most part on the Model Code of Judicial Conduct adopted by the American Bar Association in 2000 (hereinafter referred to as "ABA Code (2000)"), with amendments in August 2003 (hereinafter referred to as "ABA Code (2000, amended 2003)"), as follows:

Preamble

The Preamble is derived from the Preamble to ABA Code (2000), with the addition of the last paragraph.

Terminology

The definition of "fiduciary" is derived from a similar definition in the ABA Code (2000) Terminology section, with the addition of the references to an "attorney-in-fact" and "personal representative." In light of the addition of this definition, the definition of "fiduciary" in Maryland Code (1987), Canon 3C (3)(b) for the limited purpose of that Canon is omitted.

The definition of "gift" is added to reference Code, State Government Article, §15-102 (p), which, for purposes of

provisions of the Maryland Public Ethics Law applicable to *inter alia* judges as of the date this Rule was proposed, defined "gift" to mean the transfer of anything of economic value, regardless of form, without adequate and lawful consideration, but not to include the solicitation, acceptance, receipt, or regulation of a political contribution that is regulated in accordance with Code, Election Law Article or any other State law regulating the conduct of elections or the receipt of political contributions.

The definition of "honorarium" is added to reference Code, State Government Article, §15-102 (r), which, for purposes of provisions of the Maryland Public Ethics Law applicable to *inter alia* judges as of the date this Rule was proposed, defined "honorarium" to mean the payment of money or anything of value for speaking to, participating in, or attending a meeting or other function or for writing an article that has been or is intended to be published but not to include payment for writing a book that has been or is intended to be published.

The definition of "impartial, impartiality, or impartially" is derived from a similar definition in the ABA Code (2000, amended 2003) Terminology section, with the addition of "impartially."

The definition of "knowingly, knowledge, know, or knows" is derived from a substantially similar definition in the ABA Code (2000) Terminology section.

The definition of "member of the judge's family" is derived from a substantially similar definition in the ABA Code (2000) Terminology section.

The definition of "member of the judge's household" is substituted for the definition of "member of the judge's family residing in the judge's household" in the ABA Code (2000) Terminology section, to incorporate Code, State Government Article, §15-102 (z), which, for purposes of provisions of the Maryland Public Ethics Law applicable to *inter alia* judges as of the date this Rule was proposed, defined "member of household" to mean "(1) if sharing an individual's legal residence, the individual's: (i) spouse; (ii) child; (iii) ward; (iv) financially dependent parent; or (v) other financially dependent relative; or (2) an individual's spouse, child, ward, parent, or other relative, over whose financial affairs the individual has legal or actual control."

The definition of "political organization" is derived from a substantially similar definition in the ABA Code (2000) Terminology section, but revised to state expressly that an organization may act for more than one candidate.

The definition of "require" is derived from a substantially similar definition in the ABA Code (2000) Terminology section. The infinitive is used to avoid an unnecessary and potentially incomplete listing of various forms of "require."

The definition of "significant financial interest" is derived from the definition of "financial interest" set forth in Code, State Government Article (1984, 1995 Replacement Volume and 1998 Supplement), §15-102 (n) and the exceptions in the definition of "economic interest" in the ABA Code (2000) Terminology Section. In light of this definition, the definition of "financial interest" in Maryland Code (1987), Canon 3C (3)(c) for the limited purpose of that Canon and the term "de minimis" in the ABA Code (2000) Terminology Section are omitted. References to a proceeding being "imminent" are substituted for the ABA Code (2000) references to "impending" proceedings.

The definition of "third degree of relationship" is derived from a substantially similar definition in the ABA Code (2000) Terminology section. In light of the addition of this definition, the requirement in Maryland Code (1987), Canon 3C (3)(a) for calculation of relationships according to the civil law system but only for the limited purpose of that Canon is omitted.

The ABA Code (2000) definitions of "aggregate," "appropriate authority," "candidate," "continuing part-time judge," "court personnel," "law," "member of the candidate's family," "nonpublic information," "periodic part-time judge," "pro tempore part-time judge," and "public election" are omitted as inapplicable to Maryland or otherwise unnecessary.

Canon 1

Canon 1 is derived from Maryland Code (1987), Canon 1, except that the language has been reworded to be mandatory rather than hortatory in accordance with ABA Code (2000), Canon 1.

Canon 1 is consistent with Maryland Declaration of Rights, Article 33, which states, in part, that "the independency and uprightness of Judges are essential to the impartial administration of Justice, and a great security to the rights and liberties of the People."

ABA Code (2000), Canon 1 states that a judge should "participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved." Although desirable, a judge should not be obligated to participate in "establishing" standards of conduct.

The Comment is new and is substantially the same as the Commentary to ABA Code (2000, amended 2003), Canon 1.

Canon 2

Canon 2A is derived from the first sentence of Maryland Code (1987), Canon 2A, except that the language has been reworded to be mandatory rather than hortatory in accordance with ABA Code (2000, amended 2003), Canon 2A.

The second sentence of Maryland Code (1987), Canon 2A, which suggested application of the Canon to both personal and professional life, now is covered in the Comment to Canon 2A.

The Comment to Canon 2A is based on the first paragraph of the Comment to Maryland Code (1987), Canon 2B and, with the omission of the second sentence as to avoiding impropriety and appearance of impropriety, on the Commentary to ABA Code (2000, amended 2003), Canon 2A.

Canon 2B is derived from Maryland Code (1987), Canon 2B, except that the language has been reworded to be mandatory rather than hortatory and references to political relationships, to lending prestige, and to the judge's benefit are added in accordance with ABA Code (2000), Canon 2B. Additionally, references to an appearance of improper influence and to employment offers, are added.

The Comment to Canon 2B is based on the Commentary to ABA Code (2000), Canon 2B, with the addition of the reference to a "personal" communication and omission of the third sentence of the second paragraph, as to retaining control over advertisement of publications, which was considered impracticable; the second sentence of the fourth paragraph, as to Canon 5 with respect to use of a judge's name in political activities, and the reference, in that paragraph, as to responses to official inquiries about judicial candidates; and the second and fourth sentences of the fifth paragraph, as to the effect of testifying on lawyers and the need to discourage requests for such testimony.

Canon 2C is derived from Maryland Code (1987), Canon 2C and the comparable ABA Code (2000), Canon 2C.

The Comment to Canon 2C is derived from the Comment to Maryland Code (1987) and Commentary to ABA Code (2000), Canon 2C, with the addition of the third and fourth sentences, derived from part of the Maryland Code (1987) Committee Note to Canon 2C. Additionally, the citations to various cases are omitted.

Canon 3

Canon 3A is derived from Maryland Code (1987), Canon 3A (9) and the comparable ABA Code (2000), Canon 3B (5), except as to persons under the direction and control of a judge, and from the references in Maryland Code (1987), Canon 3B (1), the comparable ABA Code (2000), Canon 3C (1), the Comment to Maryland Code (1987), Canon 3A (9), and the Commentary to ABA Code (2000), Canon 3B (5), as to diligence, impartiality, and absence of bias and prejudice. Duties set forth previously as pertaining to adjudicative or administrative functions that in fact pertain to all judicial functions are set forth in Canon 3A.

The requirement in ABA Code (2000), Canon 3A that judicial duties take precedence "over all ... other activities" and the description of "judicial duties" as those prescribed by "law" are omitted.

The Comment to Canon 3A is derived from, except as they relate to persons under control of a judge, the Comment to Maryland Code (1987), Canon 3A (9) and Commentary to ABA Code (2000), Canon 3B (5), except that the first paragraph has been restated as the fifth sentence and the listing of those who could perceive judicial bias is omitted.

Canon 3B (1) and (2) is derived from Maryland Code (1987), Canon 3A (1) and (2), except that the language has been reworded to be mandatory rather than hortatory, in accordance with ABA Code (2000), Canon 3B (2).

Canon 3B (3) is derived from Maryland Code (1987), Canon 3A (3), except that the language has been reworded to be mandatory rather than hortatory and the newly defined term "require" is substituted for "maintain," in accordance with ABA Code (2000), Canon 3B (3).

Canon 3B (4) and (5) is derived from Maryland Code (1987), Canon 3A (4), except that the language has been reworded to be mandatory rather than hortatory, in accordance with ABA Code (2000), Canon 3B (4). The Comment to Canon 3B (5) is derived from the Commentary to ABA Code (2000), Canon 3B (4).

Canon 3B (6)(a) and (b) is derived from the first sentence of Maryland Code (1987), Canon 3A (5), except that the language has been reworded to be mandatory rather than hortatory, in accordance with ABA Code (2000), Canon 3B (7). Additionally, the limitations "pending before the judge" and "[w]hile presiding over a proceeding" are added. Canon 3B (6)(c), (d), (f), and (g) is derived from the exceptions in ABA Code (2000), Canon 3B (7)(a), (d), (c), and (e) and the second sentence of the Comment

to Maryland Code (1987), Canon 3A (5) as to consultation with other judges and staff. Canon 3B (6)(e) is derived from the second sentence of Maryland Code (1987), Canon 3A (5) and the comparable ABA Code (2000), Canon 3B (7)(b), with the addition of "reasonable." The first and fourth paragraphs of the Comment to Canon 3B (6) are derived from the first and third sentences of the Comment to Maryland Code (1987), Canon 3A (5) and the comparable first and fourth paragraphs of the Commentary to ABA Code (2000), Canon 3B (7). The second, third, and fifth through ninth paragraphs of the Comment to Canon 3B (6) are derived from the second, third, and fifth through ninth paragraphs of the Commentary to ABA Code (2000), Canon 3B (7), with the addition, in the sixth paragraph, of a reference to "matters of which the court properly can take judicial notice."

Canon 3B (7) is derived from Maryland Code (1987), Canon 3A (6), except that the language has been reworded to be mandatory rather than hortatory and the words "efficiently" and "fairly" are added, in accordance with ABA Code (2000), Canon 3B (8). The Comment to Canon 3B (7) is derived from the Comment to Maryland Code (1987), Canon 3A (6) and the comparable second paragraph of the Commentary to ABA Code (2000), Canon 3B (8). The first paragraph of the Commentary to ABA Code (2000), Canon 3B (8), as to supervision of cases to ensure rights to be heard without unnecessary cost or delay and facilitation of settlement, is omitted.

Canon 3B (8) is derived from Maryland Code (1987), Canon 3A (7), except that the language has been reworded to be mandatory rather than hortatory and reference to an expectation of affecting an outcome of fairness is added, in accordance with the first and second sentences of ABA Code (2000), Canon 3B (9). The fourth sentence of ABA Code (2000), Canon 3B (9), which excludes a judge acting *pro se*, is omitted. The Comment to Canon 3B (8) is derived from the Comment to Maryland Code (1987), Canon 3A (7) and the third sentence of the Commentary to ABA Code (2000), Canon 3B (9).

Canon 3B (9) and the Comment to Canon 3B (9) are derived from ABA Code (2000, amended 2003), Canon 3B (10) and the Commentary to ABA Code (2000, amended 2003), Canon 3B (10).

Canon 3B (10) is derived from Maryland Code (1987), Canon 3A (8), except that the language has been reworded to be mandatory rather than hortatory, in accordance with ABA Code (2000, amended 2003), Canon 3B (11), and has been broadened to cover communication in addition to oral communication, in accordance with the Comment to Canon 3A. The Comment to Canon 3B (10) is derived from the Commentary to ABA Code (2000, amended 2003), Canon 3B (11).

Canon 3B (11) is derived from Maryland Code (1987), Canon 3A (10) and the comparable ABA Code (2000), Canon 3B (6).

Canon 3B (12) is derived from ABA Code (2000), Canon 3B (1).

Canon 3C (1) is derived from the provisions as to cooperation in Maryland Code (1987), Canon 3B (1) and the proscription against favoritism and nepotism in the first sentence of Maryland Code (1987), Canon 3B (4), except that the language has been reworded to be mandatory rather than hortatory, in accordance with ABA Code (2000), Canon 3C (1) and (4). The provisions in Maryland Code (1987), Canon 3B (1) and ABA Code (2000), Canon 3C (1) as to maintaining "professional competence in judicial administration" are omitted. The Comment to Maryland Code (1987), Canon 3B (1), which described the revision of the 1987 provisions as to bias and prejudice and cooperation, also is omitted.

Canon 3C (2) is derived from Maryland Code (1987), Canon 3B (2) and the comparable ABA Code (2000), Canon 3C (2). The Comment to Maryland Code (1987), Canon 3B (2), which described the revision of the 1987 provision, is omitted.

Canon 3C (3) is derived from ABA Code (2000), Canon 3C (3).

Canon 3C (4) is derived from the second and third sentences of Maryland Code (1987), Canon 3B (4), except that the language has been reworded to be mandatory rather than hortatory, in accordance with the first and fourth sentences of ABA Code (2000), Canon 3C (4). The provision of the first sentence of Maryland Code (1987), Canon 3B (4) as to appointing qualified persons is omitted. The Comment to Canon 3C (4) is derived from the Comment to Maryland Code (1987), Canon 3B (4) and the second sentence of the Commentary to ABA Code (2000), Canon 3C (4). The first sentence of the ABA Commentary, which listed examples of appointees, is omitted.

ABA Code (2000), Canon 3C (5), which would bar appointment of election contributors, is omitted.

Canon 3D is derived from Maryland Code (1987), Canon 3C, except that the language has been reworded to be mandatory rather than hortatory, reference to bias or prejudice against "a party's lawyer" is added in Canon 3D (1)(a), reference to a former law partner as a material witness is omitted from Canon 3D (1)(b), the requirement that the judge know of a relative's position as director, officer, or trustee is omitted in Canon 3D (1)(c), and Canon 3D (1)(e) is added, all in accordance with ABA Code (2000, amended 2003), Canon 3E (1)(a) through (e) and (2). Additionally, "recuse" is substituted for "not participate" and

"disqualify." Also, in Canon 3D (1)(a), "extra-judicial" is substituted for "personal." In Canon 3D (1)(c) and (2), the newly defined terms "member of the judge's family" and "member of the judge's household" are substituted for the narrower references in Maryland Code (1987), Canon 3C (1)(c) and (2) to a "spouse" and "minor" children "residing in the judge's household" and in ABA Code (2000, amended 2003), Canon 3E (1)(c) and (2) to a "spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household" and "spouse and minor children residing in the judge's household" to conform to the Maryland Public Ethics Law applicable to *inter alia* judges. ABA Code (2000), Canon 3E (1)(e), which provides for recusal in cases involving campaign contributors, is omitted.

The Comment to Canon 3D (1)(b) is derived from the Comment to Maryland Code (1987), Canon 3C (1)(b). The Comment to Canon 3D (1)(c) is derived from the first sentence of the second paragraph of the Comment to Maryland Code (1987), Canon 3C (1)(c), while the second and third sentences of that paragraph are omitted. The first paragraph, which set forth a statutory definition of "significant financial interest," is omitted as unnecessary in light of the Terminology section. ABA Code (2000), Canon 3D (1)(c) requires recusal if any but a *de minimis* economic interest is present. Use of "significant financial interest" reflects the decision of the Court of Appeals, in the 1987 revision, that *de minimis* financial interests should not require recusal automatically.

The Comment to Canon 3D (1)(d)(ii) is derived from the Comment to Maryland Code (1987), Canon 3C (1)(d)(ii).

The Comment to Canon 3D (2) is derived from the Commentary to the introductory language of ABA Code (2000, amended 2003), Canon 3E (1), except the second sentence as to employment negotiation, which now is covered by Canon 2B.

Canon 3E is derived from Maryland Code (1987), Canon 3D, with the substitution of "out of the presence of the judge" for "independently of the judge's participation" and the addition of a requirement that an agreement be on the record to conform to ABA Code (2000), Canon 3F. The Comment to Canon 3E is substituted for the Comment to Maryland Code (1987), Canon 3D, which allowed agreement by a *pro se* party for a judge's participation, to ensure an independent decision while allowing a judge to remind parties that a non-recusal agreement is permissible.

Canon 3F (1) is derived from Maryland Code (1987), Canon 3B (3), with the omission of the phrase "of which the judge may be aware." Canon 3F (2) and (3) is derived from the second

sentences of ABA Code (2000), Canon 3D (1) and (2), with the addition of the qualifier "[i]f other corrective measures are not appropriate or, if attempted, were not successful." The first sentences of ABA Code (2000), Canon 3D (1) and (2), which exhort a judge to take appropriate action based on a "likelihood" of a violation, are omitted. Canon 3F (4) is derived from ABA Code (2000), Canon 3D (3), except for the clause pertaining to exemption from civil action. The first sentence of the Comment to Canon 3F is added, while the second sentence is derived from the Commentary to ABA Code (2000), Canon 3D (3). The third sentence is derived from the Comment to Maryland Code (1987), Canon 3B(3).

Canon 4

Canon 4A is derived from the introductory language of Maryland Code (1987), Canon 4, but reworded to state a duty in the manner of conducting an extra-judicial activity, in accordance with ABA Code (2000), Canon 4A. In Canon 4A (1), reference to "caus[ing] a substantial question" is substituted for "cast reasonable doubt." The first paragraph of the Comment to Canon 4A is derived from the Comment to Maryland Code (1987), Canon 4A and the comparable paragraph in the Commentary to ABA Code (2000), Canon 4A. The first sentence of the second paragraph of the Comment to Canon 4A is added to highlight the purpose of the examples in the second through fourth sentences, which are derived from the second paragraph of the Commentary to ABA Code (2000), Canon 4A.

Canon 4B is derived from the first two sentences of Maryland Code (1987), Canon 4A, with addition of the qualifier "[s]ubject to other provisions of this Code," in accordance with ABA Code (2000), Canon 4B, and omission of the phrase "on both legal and non-legal subjects." The second sentence of Maryland Code (1987), Canon 4A, which expressly allowed recreational and social activities, is omitted. The Comment to Canon 4B is derived from the second paragraph of the Comment to Maryland Code (1987), Canon 4C (1) and the first, second, and fourth sentences of the Commentary to ABA Code (2000), Canon 4B. The third sentence of the ABA Commentary, which enables judges to participate in promoting fair administration of justice, judicial independence, and the integrity of the legal profession and to oppose persecution in other countries, is omitted.

Canon 4C (1) is derived from Maryland Code (1987), Canon 4B (1), but, in accordance with ABA Code (2000), Canon 4C (1), is reworded to bar appearance except in specified instances such as the private capacity exception in Maryland Code (1987), Canon 4B

(3), which, accordingly, is omitted. Also, "improvement of" is added to modify "the law," to conform to the Comment to Canon 4B. The Comment to Canon 4C (1) is derived from the Comment to Maryland Code (1987), Canon 4B (1) and renders unnecessary the Maryland Code (1987), Canon 4B (1) reference to matters concerning "the judiciary." The Commentary to ABA Code (2000), Canon 4B (1), cross-referencing Canon 2B, is omitted.

Canon 4C (2) is derived from the provision of Maryland Code (1987), Canon 4B (2) as to serving on a governmental advisory body and the similar, first sentence of ABA Code (2000), Canon 4B (2), but is restated to allow acceptance of an appointment to a governmental advisory commission, committee, or position in addition to those devoted to the administration of justice, the legal system, or improvement of the law. The Comment to Canon 4C (2) is derived from the third and fourth sentences of the Comment to Maryland Code (1987), Canon 4B (2) and the third sentence of the Commentary to ABA Code (2000), Canon 4C (2). The second and third sentences of the Maryland Code (1987) Comment and the comparable sentences in the Commentary to ABA Code (2000), Canon 4C (2), which referenced the valuable service rendered in the past and the demands of today's dockets and controversies, are omitted. The second paragraph of the ABA Commentary, which disclaimed effect on nongovernmental service, also is omitted.

Canon 4C (3) is derived from the provision of Maryland Code (1987), Canon 4B (2) as to ceremonial occasions and the comparable second sentence of ABA Code (2000), Canon 4C (2).

Canon 4C (4)(a) and (b) is derived from the introductory language of Maryland Code (1987), Canon 4C and the comparable ABA Code (2000), Canon 4C (3), except as it related to governmental service. The reference to membership is omitted from Canon 4C (4)(b) as potentially covering entities such as condominium associations that may be conducted for economic advantage but membership in which is not intended to be proscribed. The adjective "non-legal" is omitted from Canon 4C (4)(b), as acting as a "legal" adviser also is barred under Canon 4G. The Comment to Canon 4C (4)(a) is derived from the second paragraph of the Commentary to ABA Code (2000), Canon 4C (3). The first and third paragraphs of the Commentary to ABA Code (2000), Canon 4C (3), as to governmental service and other potentially applicable Code provisions, are omitted. Canon 4C (4)(c) is derived from Maryland Code (1987), Canon 4C (1)(b) and (c) and the comparable ABA Code (2000), Canon 4C (3)(a), with the omission of the reference to membership, the adjective "non-legal," and the language "will be engaged in proceedings that would ordinarily come before" the judge and, to broaden the limitation on the judge's service to such organizations, the substitution of the reference to "any court" for limited references to courts on

which the judge serves or has appellate jurisdiction. The Comment to Canon 4C (4)(c) is derived from the first paragraph of the Comment to Maryland Code (1987), Canon 4C (1) and the comparable Commentary to ABA Code (2000), Canon 4C (3)(a).

Canon 4C (4)(d)(i)(A) is derived from the first clause of the first sentence of Maryland Code (1987), Canon 4C (2), except as to use of prestige, with the addition of the exception for solicitation from certain other judges, in accordance with ABA Code (2000), Canon 4C (3)(b)(i). The second clause of the first sentence of Maryland Code (1987), Canon 4C (2), as to listing on letterhead, is omitted from the Canon but discussion of such usage is added to the Comment to Canon 4C (4)(d). Canon 4C (4)(d)(i)(B) is derived from ABA Code (2000), Canon 4C (3)(B)(iii). Canon 4C (4)(d)(ii) is derived from the third sentence of Maryland Code (1987), Canon 4C (2), except as to attendance. Canon 4C (4)(d)(iii) is derived from the first sentence of Maryland Code (1987), Canon 4C (2), as it related to use of prestige, with the addition of the reference to "membership solicitation," in accordance with ABA Code (2000), Canon 4C (3)(b)(iv). Canon 4C (4)(d)(iv) (A) and (B) is derived from ABA Code (2000), Canon 4C (3)(b)(i), except as to personal solicitation. Canon 4C (4)(d)(iv)(C) is derived from the second sentence of Maryland Code (1987), Canon 4C (2) and the comparable ABA Code (2000), Canon 4C (3)(b)(ii). The words "improvement of" are added to modify "the law," to conform to the Comment to Canon 4B. The Comment to Canon 4C (4)(d) is derived from the Commentary to ABA Code (2000), Canon 4C (3)(b), with the addition of the provision as to listing as a director, officer, or trustee.

Canon 4D (1) is derived from Maryland Code (1987), Canon 4D (1), but the language has been reworded to be mandatory rather than hortatory, in accordance with ABA Code (2000), Canon 4D (1). Reference to "Canon 2B" is substituted for the references to "us[ing] the judge's position" and being "reasonably ... perceived to exploit the judge's judicial position." The Comment to Canon 4D (1) is derived from the third and fourth paragraphs of the Commentary to ABA Code (2000), Canon 4D (1). The first two paragraphs of the ABA Commentary, as to time for compliance and use of confidential information, are omitted.

Canon 4D (2) is derived from Maryland Code (1987), Canon 4D (2), with the addition of the phrase "subject to other provisions of this Code," in accordance with the similar ABA Code (2000), Canon 4D (2). The ABA Code provision, however, includes investment holdings of a member of the judge's family, which is not included in Canon 4D (2). Accordingly, the Commentary to ABA Code (2000), Canon 4D (2) is omitted. Additionally, the ABA Code provision does not contain the exemptions contained in the 1987

Maryland provision and carried forward in Canon 4D (2). ABA Code (2000), Canon 4D (3) and the Commentary, as to business entities other than certain family-owned businesses, is omitted. Canon 4D (3) and (4) is derived from Maryland Code (1987), Canon 4D (3) and (4), but the language has been reworded to be mandatory rather than hortatory, in accordance with ABA Code (2000, amended 2003), Canons 4D (4) and 3B (12), with addition of the qualifier "confidential, privileged, or otherwise not part of the public record." The cross references to rules and statutory provisions governing access to court records and confidentiality are added.

The introductory language of Canon 4D (5) is derived from the third sentence of Maryland Code (1987), Canon 4F (1), but reworded to bar acceptance absent an exception, in accordance with the introductory language of ABA Code (2000), Canon 4D (5). Canon 4D (5)(a) is derived from the first sentence of the Comment to Maryland Code (1987), Canon 4F (2) and Commentary to ABA Code (2000), Canon 4D (5). Canon 4D (5)(b) is derived from Maryland Code (1987), Canon 4F (1)(a), reworded to bar acceptance, with the addition of references to a "tape or other resource material" and "an invitation to ... a bar-related function or an activity devoted to ... improvement of the law," in accordance with ABA Code (2000), Canon 4D (5)(a). Therefore, the second paragraph of the Comment to Maryland Code (1987), Canon 4F (2), as to invitations, is omitted. Canon 4D (5)(c) and (i) is derived from ABA Code (2000), Canon 4D (5)(b) and (h). Canon 4D (5)(d) through (h) is derived from Maryland Code (1987), Canon 4F (1)(b) through (d), (f), and (e), respectively, and the comparable ABA Code (2000), Canon 4D (5)(c) through (g). In Canon 4D (5)(f), "bequest" has been added in accordance with ABA Code (2000), Canon 4D (5)(e), but the word "recusal" has been retained from the 1987 Maryland Code, instead of "disqualification." In Canon 4D (5)(h), reference to "the same criteria applied to other applicants" is added, in accordance with ABA Code (2000), Canon 4D (5)(g). Maryland Code (1987), Canon 4F (2), which ascribes favors, gifts, and loans to a household member to the judge, is omitted.

The first paragraph of the Comment to Canon 4D (5) is derived from the first two sentences of Maryland Code (1987), Canon 4F (1). The second paragraph of the Comment to Canon 4D (5) is derived from the second paragraph of the Commentary to the introductory language of ABA Code (2000), Canon 4D (5), with substitution of "household member" for "family member" to correspond with use of the newly defined term "member of the judge's household" and deletion of "family" where it modified the defined term. The third and fourth paragraphs of the Comment to Canon 4D (5) are derived from the Commentary to ABA Code (2000), Canon 4D (5)(a). The fifth paragraph of the Comment to Canon 4D (5) is derived from the Commentary to ABA Code (2000), Canon 4D

(5)(d), but the word "recusal" is substituted for "disqualification."

Canon 4E (1) and (3) is derived from the first through third and fifth sentences of Maryland Code (1987), Canon 4G, but the language has been reworded to be mandatory rather than hortatory, and the newly defined terms "fiduciary" and "member of the judge's family" are substituted for the references to "personal representative (executor or administrator) or special administrator of the estate of a descendant, ... trustee of a trust, ... custodian, ... guardian, or ... attorney in fact" and "spouse, ... surviving spouse or ... related within the third degree (according to the civil law system)," in accordance with ABA Code (2000), Canon 4E (1) and (3). Accordingly, the fourth sentence of Maryland Code (1987), which allowed a judge, in "extraordinary cases," to serve as attorney-in-fact or guardian for a "person with whom the judge maintains a close familial relationship," is omitted. Canon 4E (2) is derived from ABA Code (2000), Canon 4E (2). The Comment to Canon 4E is derived from the first paragraph of the Commentary to ABA Code (2000), Canon 4E. The Comment to Maryland Code (1987), Canon 4E and the comparable second paragraph of the ABA Commentary, as to potential conflicts, are omitted.

Canon 4F is derived from Maryland Code (1987), Canon 4H, with the addition of the reference to unauthorized performance of "judicial functions in a private capacity," in accordance with ABA Code (2000), Canon 4F. The Comment to Canon 4F is derived from the Comment to Maryland Code (1987), Canon 4F and the first sentence of the Commentary to ABA Code (2000), Canon 4F.

The first sentence of Canon 4G (1) is derived from Maryland Code (1987), Canon 4I (1)(a) and the first sentence of ABA Code (2000), Canon 4G. The second sentence of Canon 4G (1) is derived from the second sentence of ABA Code (2000), Canon 4G. Canon 4G (2) is derived from Maryland Code (1987), Canon 4I (1)(b). Maryland Code (1987), Canon 4I (2) through (4), which provided for review of the duration of an agreement in connection with a prior law practice, is omitted as too narrow. The Comment to Canon 4G is derived from the Commentary to ABA Code (2000), Canon 4G, with the addition of the reference to an orphans' court judge.

Canon 4H is derived from the first sentence of Maryland Code (1987), Canon 4E, with the addition of "extra-judicial," the limitation on the source of compensation, and the reference to a judge's "guest," in accordance with ABA Code (2000), Canon 4H, and with addition of the cautionary "[u]nless otherwise prohibited by law." The Comment to Canon 4H is substituted for the Commentary to ABA Code (2000), Canon 4H. Code, State

Government Article, §15-102 (r) governs acceptance of an "honorarium" in Maryland, as delineated in the referenced Judicial Ethics Opinion No. 128 (issued February 2, 2000), "Limitations on Honoraria." The second paragraph of the Comment is similar to ABA Code (2000), Canon 4H (2) and I. The sentences of Maryland Code (1987), Canon 4E and ABA Code (2000), Canon 4H declaring all else to be compensation are omitted.

Canon 5

Canon 5A, B (1)(a) through (c) and (f), and C is derived from Maryland Code (1987), Canon 5, but the language is reworded as mandatory, rather than hortatory, reference to acting "in a manner consistent with the impartiality, independence, and integrity of the judiciary" is added, and Canon 5B (1)(d) is substituted for the 1987 Maryland provision limiting speech to a pledge of "faithful and impartial performance of duties," in accordance with ABA Code (2000, amended 2003), Canon 5A (1)(a) through (c), (2), (3)(a) in part, and (c) through (e). In the Comment to Canon 5B (1)(c), reference to a "sample ballot" is substituted for the reference to "the same ticket."

Language barring announcement by a judge as to views on cases, controversies, or issues likely to come before the judge has been omitted in light of *Republican Party of Minnesota v. White*, 536 U.S. 765, 122 S. Ct. 2528 (2002). Accordingly, Canon 5C has been modified to include the status of lawyers as candidates.

Canon 5D is derived in part from ABA Code (2000), Canon 5E except the first sentence. The provisions of Canon 5 that are applicable to lawyers who are candidates for judicial office are included in Rule 8.2 of the Maryland [Lawyers'] Rules of Professional Conduct. Under Canon 5D, the status of the candidate during the campaign - whether the candidate is a judge or a lawyer who is not a judge - determines whether Canon 5 or Rule 8.2 (b) of the Maryland [Lawyers'] Rules of Professional Conduct governs the behavior of the candidate. The status of the candidate when disciplinary proceedings are initiated determines whether the judicial disciplinary process or the attorney disciplinary process is used.

Canon 6

Canon 6A is derived from Maryland Code (1987), Canon 6A, with the Committee note omitted.

Canon 6B is derived from Maryland Code (1987), Canon 6B, with substitution of "Canons" for "any of the provisions of this

Code of Judicial Conduct" to clarify that a judge can be charged only with violating a Canon and not a Comment or Committee note.

Canon 6C is derived from Maryland Code (1987), Canon 6C, but with Canon 4D (4) made applicable to recalled judges.

Canon 6D is derived from ABA Code (2000), Canon 6F.

MARYLAND RULES OF PROCEDURE
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS
CHAPTER 800 - MISCELLANEOUS

ADD new Rule 16-814, as follows:

Rule 16-814. MARYLAND CODE OF CONDUCT FOR JUDICIAL APPOINTEES

Preamble

The Court of Appeals has adopted this Code of Conduct for **Judicial Appointees** to govern the conduct of all **judicial appointees**. This Code is generally patterned after the Maryland Code of Judicial Conduct, set forth in Rule 16-813, and the Committee notes, following many of the provisions of that Code, explain those provisions and may be of assistance in the interpretation of parallel provisions of this Code.

This Code sets forth minimum standards and is not intended as a limitation on an appointing authority's power to impose additional requirements.

Terminology

In this Code the following definitions apply except as expressly otherwise provided or as necessary implication requires:

(a) Fiduciary

"**Fiduciary**" includes administrator, attorney-in-fact by power of attorney, executor, guardian, personal representative, and trustee.

Cross reference: See Canons 3D (1)(c) and (2) and 4E. For a definition of "guardian," see Rule 1-202 (j).

(b) Gift

"**Gift**" has the meaning stated in Code, State Government Article, §15-102.

Cross reference: See Canon 4D (5).

(c) Honorarium

"**Honorarium**" has the meaning stated in Code, State Government Article, §15-102.

(d) Impartial, Impartiality, or Impartially

"**Impartial,**" "**impartiality,**" or "**impartially**" denotes absence of bias or prejudice in favor of, or against, a party or class of parties, as well as maintaining an open mind in considering each issue that is or may come before the judicial appointee.

Cross reference: See Canons 2A; 3A, B (9) and D (1); 4A (1); and 5B (1)(a) and (d).

(e) Judicial Appointee

"Judicial appointee" means: (1) an auditor, examiner, master, or referee appointed by the Court of Appeals, the Court of Special Appeals, a circuit court, or an orphans' court; or (2) a commissioner appointed by a District Administrative Judge with the approval of the Chief Judge of the District Court of Maryland.

Cross reference: For the definition of judicial appointee for purposes of filing a financial disclosure statement, see Rule 16-816 a.

(f) Knowingly, Knowledge, Known, or Knows

"Knowingly," "knowledge," "known," or "knows" means actual knowledge of the fact in question. Actual knowledge may be inferred from circumstances.

Cross reference: See Canons 3D (1)(a), (c), and (d)(i), (ii), (iii), and (iv) and F (2) and (3) and 5B (1)(e).

(g) Member of Judicial Appointee's Family

"Member of the judicial appointee's family" means a spouse, child, grandchild, parent, grandparent, or other relative or individual with whom a **judicial appointee** maintains a close familial relationship.

Cross reference: See Canons 3D (1)(c) and 4G (1).

(h) Member of Judicial Appointee's Household

"Member of the judicial appointee's household" has the meaning stated in Code, State Government Article, §15-102 for "member of household."

Cross reference: See Canons 3D (2) and 4D (5).

(i) Political Organization

"Political organization" means a political party or other group, the principal purpose of which is to further the election or appointment of one or more candidates to political office.

Cross reference: See Canon 5B (1)(b) and (c).

(j) Require

"Require," in the context that a **judicial appointee** **"require"** certain conduct of others, means that the **judicial appointee** is to take reasonable steps to direct and control the conduct of those persons.

Cross reference: See Canon 3B (3), (5), (8), and (10) and C (2).

(k) Significant Financial Interest

(1) **"Significant financial interest"** means ownership of:

(A) an interest as the result of which the owner has received within the past three years, is currently receiving, or in the future is entitled to receive, more than \$1,000 per year;

(B) more than 3% of a business entity; or

(C) a security of any kind that represents, or is convertible into, more than 3% of a business entity.

(2) In applying this definition:

(A) ownership of an interest in a mutual or common investment fund that holds a security is not ownership of the security unless:

(i) the **judicial appointee** participates in the management of the fund; or

(ii) there is before the **judicial appointee** a proceeding that could substantially affect the value of the interest, or such proceeding is imminent;

(B) ownership of a government security is not a **significant financial interest** in the issuer unless there is before the **judicial appointee** a proceeding that could substantially affect the value of the security, or such proceeding is imminent;

(C) neither a deposit in a financial institution nor a proprietary interest such as or similar to that of a depositor in a mutual savings association, member in a credit union, or policy holder in a mutual insurance company is a **significant financial interest** in the entity unless there is before the **judicial appointee** a proceeding that could substantially affect the value of the deposit or interest, or such proceeding is imminent; and

(D) an ownership interest in a security held by a charitable, civic, educational, fraternal or sororal, or religious organization will not be imputed to a **judicial appointee** merely because the **judicial appointee** or the **judicial appointee's** child, parent, or spouse is an adviser to or director or officer of, or otherwise actively participates in, the organization.

Cross reference: See Canon 3D (1)(c) and (d)(iii).

(1) Third Degree of Relationship

"**Third degree of relationship**" means the relationship between a **judicial appointee** and the following individuals: a

great-grandparent, grandparent, parent, uncle, aunt, brother,
sister, child, grandchild, great-grandchild, nephew, or niece.

Cross reference: See Canon 3D (1)(d).

CANON 1

Integrity and Independence

An independent and honorable judicial system is indispensable to justice in our society. A **judicial appointee** shall observe high standards of conduct so that the integrity and independence of the judicial system will be preserved. The provisions of this Code are to be construed and applied to further that objective.

CANON 2

Avoidance of Impropriety and the Appearance of Impropriety

A. A **judicial appointee** shall avoid impropriety and the appearance of impropriety. A **judicial appointee** shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the **impartiality** and integrity of the judicial system.

COMMENT

Public confidence in the judicial system is eroded by irresponsible or improper conduct by **judicial appointees**. A **judicial appointee** must expect to be the subject of constant public scrutiny. A **judicial appointee** must therefore accept restrictions on his or her conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. Examples are the restrictions on a **judicial appointee's** speech imposed by Canon 3B (8) and (9) that are indispensable to the maintenance of the **impartiality**, independence, and integrity of the judicial system.

The obligation to avoid impropriety and the appearance of impropriety applies to both the professional and personal conduct of a **judicial appointee**. Because it is not practicable to list all prohibited acts, the obligation is necessarily cast in general terms that extend to conduct by **judicial appointees** that is harmful although not specifically mentioned in this Code. Actual improprieties under this standard include violations of law, other specific provisions of this Code, or other court rules. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the **judicial appointee's** ability to carry out official responsibilities with competence, **impartiality**, and integrity is impaired. See also the Comment to Canon 2C.

B. A **judicial appointee** shall not allow official conduct to be improperly influenced by a family, political, social, or other

relationship or by an employment offer or opportunity. A **judicial appointee** shall not lend or use the prestige of the position to advance the private interests of the **judicial appointee** or others; nor shall a **judicial appointee** convey or permit others to convey the impression that they are in a special position to influence official conduct. A **judicial appointee** shall not testify voluntarily as a character witness.

COMMENT

Maintaining the prestige of the position of **judicial appointee** is essential to a system of government in which the judicial system functions independently of the executive and legislative branches. Respect for the position of **judicial appointee** facilitates the orderly conduct of legitimate judicial functions. **Judicial appointees** should distinguish between proper and improper use of the prestige of position in all of their activities. For example, it would be improper for a **judicial appointee** to allude to his or her position to gain a personal advantage, such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, official letterhead must not be used for conducting a **judicial appointee's** personal business.

A **judicial appointee** also must avoid lending or using the prestige of the position for the advancement of the private interests of others. For example, a **judicial appointee** must not use the position to gain advantage in a civil suit involving a **member of the judicial appointee's family**. As to the acceptance of awards, see Canon 4D (5)(c) and the accompanying Comment.

Although a **judicial appointee** should be sensitive to possible abuse of the prestige of the position, the **judicial appointee** may serve as a reference or provide a letter of recommendation based on the **judicial appointee's** own **knowledge**.

Judicial appointees may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration.

A **judicial appointee** must not testify voluntarily as a character witness because to do so may lend the prestige of the position in support of the party for whom the **judicial appointee** testifies. A **judicial appointee** may, however, testify when properly subpoenaed.

C. A **judicial appointee** shall not hold membership in any organization that practices invidious discrimination on the basis of national origin, race, religion, or sex.

COMMENT

Membership of a **judicial appointee** in an organization that practices invidious discrimination on the basis of national origin, race, religion, or sex gives rise to perceptions that the **judicial appointee's impartiality** is impaired. It is therefore inappropriate for a **judicial appointee** to continue to hold membership in an organization that the **judicial appointee knows**, or reasonably should **know**, practices and will continue to practice such invidious discrimination so as to give rise to the perception that the **judicial appointee's impartiality** is impaired. Membership in an organization would not be prohibited unless that membership would reasonably give rise to a perception of partiality. Certain organizations - such as congregational brotherhoods, sisterhoods, or bowling leagues - may well be restricted to individuals belonging to the particular congregation and therefore to those sharing a particular religious belief, but it is unlikely that membership in such an organization would cause people reasonably to believe that the **judicial appointee** is partial.

Whether an organization practices and will continue to practice that kind of invidious discrimination is often a complex question to which **judicial appointees** should be sensitive. The answer cannot be determined merely from an examination of an organization's current membership rolls but may depend on (1) the nature and purpose of the organization, (2) any restrictions on membership, (3) the history of the organization's selection of members, and (4) other relevant factors such as that the organization is dedicated to the preservation of cultural, ethnic, or religious values of legitimate common interests to its members, or that it is, in fact and effect, an intimate, purely private organization whose membership limitations could not be

constitutionally prohibited. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership, on the basis of national origin, race, religion, or sex, individuals who otherwise would be admitted to membership.

Although Canon 2C relates only to membership in organizations that invidiously discriminate on the basis of national origin, race, religion, or sex, a **judicial appointee's** membership in an organization that engages in any discriminatory membership practices prohibited by the law of the jurisdiction also violates Canon 2A and gives the appearance of impropriety. In addition, it would be a violation of Canon 2 for a **judicial appointee** to arrange a meeting at a club that the **judicial appointee knows** practices invidious discrimination on the basis of national origin, race, religion, or sex, in its membership or other policies, or for the **judicial appointee** to use such club regularly. Moreover, public manifestation by a **judicial appointee** of his or her **knowing** approval of invidious discrimination on any basis gives the appearance of impropriety under Canon 2 and diminishes public confidence in the **impartiality** and integrity of the judicial system, in violation of Canon 2A.

When a **judicial appointee** learns that an organization to which the **judicial appointee** belongs engages in invidious discrimination that would preclude membership under Canon 2C or under Canon 2A, the **judicial appointee** is permitted, in lieu of resigning, to make immediate efforts to have the organization discontinue its invidiously discriminatory practices, but is required to suspend participation in all other activities of the organization. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible (and in all events within two years of the **judicial appointee's** first learning of the practices), the **judicial appointee** is required to resign immediately from the organization.

CANON 3

Performance of Official Duties

In the performance of official duties, the following standards apply.

A. GENERAL RESPONSIBILITIES.

A **judicial appointee** shall perform the duties of the position diligently, **impartially**, and without having or manifesting bias or prejudice, including bias or prejudice based on age, disability, national origin, race, religion, sex, sexual orientation, or socioeconomic status.

COMMENT

A **judicial appointee** must perform his or her duties fairly and **impartially**. A **judicial appointee** who manifests bias of any kind in a proceeding impairs the fairness of the proceeding and brings the judicial system into disrepute. Facial expression and body language, in addition to oral communication, can give an appearance of bias. A **judicial appointee** must be alert to avoid behavior that may be perceived as prejudicial. For example, a **judicial appointee** must refrain from comment, gesture, or other conduct that could reasonably be perceived as sexual harassment.

B. RESPONSIBILITIES FOR THE CONDUCT OF PROCEEDINGS.

(1) A **judicial appointee** shall be faithful to the law and maintain professional competence in it.

(2) A **judicial appointee** shall not be swayed by partisan

interests, public clamor, or fear of criticism.

(3) A **judicial appointee** shall **require** order and decorum in proceedings before the **judicial appointee**.

(4) A **judicial appointee** shall be dignified.

(5) A **judicial appointee** shall be courteous to and patient with lawyers, litigants, witnesses, and others with whom the **judicial appointee** deals in an official capacity and shall **require** similar conduct of lawyers and court personnel and others subject to the **judicial appointee's** direction and control.

COMMENT

The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. **Judicial appointees** can be businesslike and efficient while being deliberate and patient.

(6) (a) A **judicial appointee** shall accord to every person who has a legal interest in a proceeding pending before the **judicial appointee**, or that person's lawyer, the right to be heard according to law.

(b) While presiding over a proceeding, a **judicial appointee** shall neither initiate, permit, or consider *ex parte* communications nor consider other communications made to the **judicial appointee** outside the presence of the parties concerning a pending or impending proceeding, except as otherwise provided in Canon 3B (6).

(c) *Ex parte* communications that relate to scheduling or

other administrative purposes or emergencies and not to substantive matters or issues on the merits are authorized, if: (i) circumstances require; (ii) the **judicial appointee** reasonably believes that no party will gain a procedural or tactical advantage as a result of the communication; (iii) the **judicial appointee** makes provision promptly to notify all other parties of the substance of the *ex parte* communication; and (iv) the **judicial appointee** affords the parties reasonable opportunity to respond.

(d) With the consent of the parties, a **judicial appointee** may confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the **judicial appointee**.

(e) A **judicial appointee** may obtain the advice of a disinterested expert on the law applicable to a proceeding if the **judicial appointee**: (i) makes provision promptly to notify all of the parties as to the expert consulted and the substance of the advice; and (ii) affords the parties reasonable opportunity to respond.

(f) A **judicial appointee** may consult with court personnel whose function is to aid the **judicial appointee** in carrying out responsibilities and with judges and other **judicial appointees**.

(g) A **judicial appointee** may initiate or consider an *ex parte* communication when expressly authorized by law to do so.

COMMENT

The prohibition against communications concerning a proceeding includes communications from lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted.

To the extent practicable, all parties or their lawyers must be included in communications with a **judicial appointee**.

Whenever Canon 3B (6) requires the presence of, or notice to, a party, it is the party's lawyer or, if the party is unrepresented, the party who is to be present or to whom notice is to be given.

Canon 3B (6) allows for limited *ex parte* communication to facilitate scheduling and other administrative purposes and to accommodate emergencies. Even then, however, a **judicial appointee** must discourage *ex parte* communication and allow it only if all of the criteria stated in Canon 3B (6) clearly are met. A **judicial appointee** must disclose to all parties all *ex parte* communication described in Canon 3B (6)(c) and (e) regarding a proceeding pending or impending before the **judicial appointee**.

A **judicial appointee** must not independently investigate facts in a case and must consider only the evidence presented, except matters of which the **judicial appointee** properly can take judicial notice.

A **judicial appointee** may request a party to submit proposed findings of fact and conclusions of law if all of the other parties are apprised of the request and given an opportunity to respond to the proposed findings and conclusions.

A **judicial appointee** must make reasonable efforts, including the provision of appropriate supervision, to ensure that Canon 3B (6) is not violated through personnel subject to the **judicial appointee's** direction and control.

(7) A **judicial appointee** shall dispose of official business efficiently, fairly, and promptly.

COMMENT

Prompt disposition of official business requires a **judicial appointee** to devote adequate time to official duties, to be punctual in attending hearings and expeditious in determining

matters under submission, and to insist that personnel subject to the **judicial appointee's** direction and control and litigants and their lawyers cooperate to that end.

(8) A **judicial appointee** shall abstain from public comment that relates to a proceeding pending or impending in any court and that might reasonably be expected to affect the outcome of that proceeding or to impair the fairness of that proceeding and shall **require** similar abstention on the part of personnel subject to the **judicial appointee's** direction and control. Canon 3B (8) does not prohibit a **judicial appointee** from making public statements in the course of official duties or from explaining for public information the procedures of a court.

COMMENT

"Personnel subject to the **judicial appointee's** direction and control" does not include the lawyers in a proceeding before a **judicial appointee**. The conduct of lawyers in this regard is governed by Rule 3.6 of the Maryland [Lawyers'] Rules of Professional Conduct.

(9) With respect to a case, controversy, or issue that is likely to come before the court, a **judicial appointee** shall not make a commitment, pledge, or promise that is inconsistent with the **impartial** performance of the duties of the appointed position.

COMMENT

Canon 3B (8) and (9) restrictions on a **judicial appointee's** speech are essential to the maintenance of the **impartiality**, independence, and integrity of the judicial system. A pending proceeding is one that has begun but not yet reached final

disposition. An impending proceeding is one that is anticipated but not yet begun. The requirement that a **judicial appointee** abstain from public comment regarding a pending or impending proceeding continues during any trial court or appellate process and until final disposition.

(10) A **judicial appointee** shall **require** lawyers in proceedings before the **judicial appointee** to refrain from manifesting, by word or conduct, bias or prejudice based on age, disability, national origin, race, religion, sex, sexual orientation, or socioeconomic status. Canon 3B (10) does not preclude legitimate advocacy when such status or other similar factor is an issue in a proceeding.

(11) Unless recusal is appropriate, a **judicial appointee** shall hear and determine matters assigned to the **judicial appointee**.

Cross reference: As to court records, see Title 16, Chapter 1000 of the Maryland Rules. As to prohibitions against, and penalties for, improper disclosure or use of information by government officials and employees, see Code, State Government Article, §§15-507 and 15-903. As to civil and criminal provisions governing improper disclosure of information, see, e.g., Code, State Government Article, §§10-626 and 10-627 (public records); Code, Tax-General Article, §13-1018 (tax information).

C. ADMINISTRATIVE RESPONSIBILITIES.

(1) A **judicial appointee** shall discharge his or her administrative responsibilities without favoritism or nepotism and shall cooperate with judges, other **judicial appointees**, and court officials in the administration of court business.

(2) A **judicial appointee** shall **require** court personnel and

others subject to the **judicial appointee's** direction and control to observe the standards of diligence and fidelity that apply to the **judicial appointee** and to refrain from manifesting bias or prejudice in the performance of their official duties.

(3) A **judicial appointee** shall not make unnecessary appointments and shall not approve compensation of appointees beyond the fair value of services rendered.

COMMENT

Consent by the parties to an appointment or an award of compensation does not relieve a **judicial appointee** of the obligation prescribed by Canon 3C (3).

D. RECUSAL.

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

(a) the **judicial appointee** has a personal bias or prejudice concerning a party or a party's lawyer or extra-official **knowledge** of a disputed evidentiary fact concerning the proceeding;

(b) (i) the **judicial appointee** served as a lawyer in the matter in controversy, or a lawyer with whom the **judicial appointee** previously practiced law served during such association as a lawyer concerning the matter, or the **judicial appointee** has been a material witness concerning it;

COMMENT

A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of Canon 3D (1)(b); a **judicial appointee** formerly employed by a governmental agency, however, should not participate in a proceeding if the **judicial appointee's impartiality** might reasonably be questioned because of such association.

(ii) if a **judicial appointee** is part-time, the **judicial appointee** or any attorney with whom the **judicial appointee** is associated, represents a party or otherwise has an interest in the proceeding;

(c) the **judicial appointee knows** that he or she, individually or as a **fiduciary**, or **a member of the judicial appointee's family**, has a **significant financial interest** in the subject matter in controversy or in a party to the proceeding;

COMMENT

There may be situations that involve a lesser financial interest but nonetheless require recusal because of the **judicial appointee's** own sense of propriety.

(d) the **judicial appointee**, the **judicial appointee's** spouse, an individual within the **third degree of relationship** to either of them, or the spouse of such an individual:

(i) is **known** to be a party to the proceeding or a director, officer, or trustee of a party;

(ii) is **known** to be acting as a lawyer in the proceeding;

COMMENT

The fact that a lawyer in a proceeding is affiliated with a

law firm with which a lawyer-relative of the **judicial appointee** is affiliated does not of itself require recusal of the **judicial appointee**. Under appropriate circumstances, the fact that "the **judicial appointee's impartiality** might reasonably be questioned" under Canon 3D (1), or that the lawyer-relative is **known** by the **judicial appointee** to have an interest in the law firm that could be "substantially affected by the proceeding" under Canon 3D (1)(d)(iii), may require the **judicial appointee's** recusal.

(iii) is **known** by the **judicial appointee** to have a **significant financial interest** that could be substantially affected by the proceeding; or

(iv) is to the **judicial appointee's knowledge** likely to be a material witness in the proceeding; or

(e) the **judicial appointee**, while a **judicial appointee** or a candidate for judicial office, has made a public statement that commits, or appears to commit, the **judicial appointee** with respect to:

(i) an issue in the proceeding; or

(ii) the controversy in the proceeding.

(2) A **judicial appointee** shall keep informed about his or her personal and **fiduciary** financial interests and shall make a reasonable effort to keep informed about the personal financial interests of each **member of the judicial appointee's household**.

COMMENT

Under Canon 3D (1), a **judicial appointee** must recuse himself or herself whenever the **judicial appointee's impartiality** might reasonably be questioned, regardless of whether any of the specific instances in Canon 3D (1) apply.

A **judicial appointee** must disclose on the record information that the **judicial appointee** believes the parties or their lawyers might consider relevant to the question of recusal, even if the **judicial appointee** believes that there is no real basis for recusal.

By decisional law, the rule of necessity may override the rule of recusal. As to a judge, for example, the judge might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. When the rule of necessity does override the rule of recusal, a **judicial appointee** must disclose on the record the basis for possible recusal and, if practicable, use reasonable efforts to transfer the matter promptly to another **judicial appointee** or judge.

E. NON-RECUSAL BY AGREEMENT.

If recusal would be required by Canon 3D, the **judicial appointee** may disclose on the record the reason for the recusal. If after disclosure of any reason for recusal other than as required by Canon 3D (a)(1), the parties and lawyers, out of the presence of the **judicial appointee**, all agree that the **judicial appointee** need not recuse himself or herself, and the **judicial appointee** is willing to participate, the agreement of the parties shall be incorporated in the record, and the **judicial appointee** may participate in the proceeding.

COMMENT

This procedure gives the parties an opportunity to waive the recusal if the **judicial appointee** agrees. The **judicial appointee** may comment on possible waiver but must ensure that consideration of the question of waiver is made independently of the **judicial appointee**. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, a **judicial appointee** may wish to have all parties and their lawyers sign a waiver agreement.

F. DISCIPLINARY RESPONSIBILITIES.

(1) A **judicial appointee** should take or initiate appropriate corrective measures with respect to the unprofessional conduct of a judge, another **judicial appointee**, or a lawyer.

(2) If other corrective measures are not appropriate or, if attempted, were not successful, a **judicial appointee** shall inform the Commission on Judicial Disabilities of facts **known** to that **judicial appointee** that raise a substantial question as to a judge's fitness for office.

(3) If other corrective measures are not appropriate or, if attempted, were not successful, a **judicial appointee** shall inform the Attorney Grievance Commission of facts **known** to the **judicial appointee** that raise a substantial question as to a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.

(4) Acts of a **judicial appointee** required or permitted by Canon 3F (1), (2), or (3) shall be absolutely privileged.

COMMENT

Permitting a **judicial appointee** to take "corrective" measures gives the **judicial appointee** a wide range of options to deal with unprofessional conduct. Appropriate corrective measures may include direct communication with the judge, **judicial appointee**, or lawyer who is believed to have committed the violation or other direct action if available. There may be instances of professional misconduct that would warrant a private admonition or referral to a bar association counseling service.

CANON 4

Extra-Official Activities

A. EXTRA-OFFICIAL ACTIVITIES IN GENERAL.

A **judicial appointee** shall conduct all extra-official activities so that they do not:

- (1) cause a substantial question as to the **judicial appointee's** capacity to act **impartially** as a **judicial appointee**;
- (2) demean the position; or
- (3) interfere with the proper performance of official duties.

COMMENT

Complete separation of a **judicial appointee** from extra-official activities is neither possible nor desirable. A **judicial appointee** should not become isolated from the **judicial appointee's** community.

An extra-official activity, however, may be perceived to reflect on a **judicial appointee's** behavior. For example, an expression of bias or prejudice by a **judicial appointee**, even outside his or her official activities, may cause a substantial question as to the **judicial appointee's** capacity to act **impartially** as a **judicial appointee**. Expressions that may do so include jokes or other remarks demeaning individuals on the basis of their age, disability, national origin, race, religion, sex, sexual orientation, or socioeconomic status. See Canon 2C and the accompanying Comment.

B. AVOCATIONAL ACTIVITIES.

Subject to other provisions of this Code, a **judicial appointee** may lecture, speak, teach, write, and otherwise participate in other extra-official activities.

COMMENT

A **judicial appointee** is in a unique position to contribute to the administration of justice, the legal system, and improvement of the law, including revision of substantive and procedural law and improvement of criminal and juvenile justice. As time may permit, a **judicial appointee** is encouraged to do so, either independently or through a bar association or other organization dedicated to the improvement of the law.

The phrase "subject to other provisions of this Code" is used, in this and other sections of Canon 4, primarily in connection with a **judicial appointee's** charitable, civic, or governmental activities, to remind **judicial appointees** that use of permissive language in various sections of this Code does not relieve a **judicial appointee** from the other provisions of this Code that apply to the specific conduct.

C. CHARITABLE, CIVIC, AND GOVERNMENTAL ACTIVITIES.

(1) Except when acting in a matter that involves the **judicial appointee** or the **judicial appointee'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 **judicial appointee** shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official.

COMMENT

As suggested in the *Reporter's Notes to the ABA Model Code of Judicial Conduct* (1990), the "administration of justice" is not limited to "matters of judicial administration" but is broad enough to include other matters relating to a judicial system.

(2) Except as otherwise provided by law and subject to Canon 4A, a judicial appointee may accept appointment to a governmental

advisory commission, committee, or position.

COMMENT

A **judicial appointee** may not accept a governmental appointment that could interfere with the effectiveness and independence of the judicial system, assume or discharge an executive or legislative power (Maryland Declaration of Rights, Article 8), or hold an "office" under the constitution or other laws of the United States or State of Maryland (Maryland Declaration of Rights, Articles 33 and 35).

(3) A judicial appointee 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 **judicial appointee** may be a director, member, non-legal adviser, officer, or trustee of a charitable, civic, educational, fraternal or sororal, law-related, or religious organization.

COMMENT

See the Comment to Canon 4B regarding use of the phrase "subject to other provisions of this Code." As an example of the meaning of the phrase, a **judicial appointee** permitted under Canon 4C (4) to serve on the board of an organization may be prohibited from such service by, for example, Canon 2C or 4A, if the organization practices invidious discrimination or if service on the board otherwise causes a substantial question as to the **judicial appointee's** capacity to act **impartially** as a **judicial appointee** or as to service as an adviser.

(b) A **judicial appointee** 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 **judicial appointee** 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.

COMMENT

The changing nature of some organizations and of their relationship to the law makes it necessary for a **judicial appointee** regularly to reexamine the activities of each organization with which the **judicial appointee** is affiliated to determine whether it is proper to continue a relationship with it. For example, in many jurisdictions, charitable organizations are more frequently in court now than in the past or make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

(d) (i) A **judicial appointee** shall not participate personally in:

(A) solicitation of funds or other fund-raising activities, except that a **judicial appointee** may solicit funds from other **judicial appointees** over whom the **judicial appointee** does not exercise supervisory authority; 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 **judicial appointee** shall not participate as a guest of honor or speaker at a fund-raising event.

(iii) Except as otherwise allowed by Canon 4C

(4)(d), a **judicial appointee** shall not use or lend the prestige of his or her position for fund-raising or membership solicitation.

(iv) A **judicial appointee** 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.

D. FINANCIAL ACTIVITIES.

(1) A **judicial appointee** shall not engage in business or financial dealings that:

(a) reasonably would be perceived to violate Canon 2B; or

(b) involve the **judicial appointee** in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the **judicial appointee** or the appointing court in matters relating to the **judicial appointee's** duties and authority.

COMMENT

Canon 4D (1)(b) is necessary to avoid creating an appearance of exploitation of position or favoritism and to minimize the potential for recusal. A **judicial appointee** also should discourage **members of the judicial appointee's family** from engaging in dealings that reasonably would appear to exploit the **judicial appointee's** position. With respect to affiliation of relatives of the **judicial appointee** with law firms appearing before the **judicial appointee**, see the Comment to Canon 3D (1)(d) relating to recusal.

Participation by a **judicial appointee** in business and financial dealings is subject to the general prohibitions in Canon 4A against activities that cause a substantial question as to **impartiality**, demean the position, or interfere with the proper performance of official duties. Such participation also is subject to the general prohibition in Canon 2 against activities involving impropriety or the appearance of impropriety and the prohibition in Canon 2B against misuse of the prestige of the position. In addition, a **judicial appointee** must maintain high standards of conduct in all of the **judicial appointee's** activities, as set forth in Canon 1. See the Comment to Canon 4B regarding use of the phrase "subject to other provisions of this Code."

Canon 4D is not intended to apply to the practice of law of part-time **judicial appointees**, which is covered by Canon 4G (2).

(2) Subject to other provisions of this Code, a **judicial appointee** may hold and manage investments, including real estate, and engage in other remunerative activity except that a full-time **judicial appointee** shall not hold 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.

(3) A **judicial appointee** shall manage investments and other financial interests to minimize the number of cases in which recusal would be required. As soon as practicable without

serious financial detriment, a **judicial appointee** shall dispose of those financial interests that might require frequent recusal.

(4) A **judicial appointee** shall neither use nor disclose, in financial dealings or for any other purpose not related to the **judicial appointee's** official duties, information that is acquired in his or her official capacity and that is confidential, privileged, or otherwise not part of the public record.

Cross reference: As to court records, see Title 16, Chapter 1000 of the Maryland Rules. As to prohibitions against, and penalties for, improper disclosure or use of information by government officials and employees, see Code, State Government Article, §§15-507 and 15-903. As to civil and criminal provisions governing improper disclosure of information, see, e.g., Code, State Government Article, §§10-626 and 10-627 (public records) and Code, Tax-General Article, §13-1018 (tax information).

(5) A **judicial appointee** shall not accept, and shall urge **members of the judicial appointee's household** not to accept, a bequest, favor, **gift**, or loan from anyone except for:

(a) a book, tape, or other resource material supplied by a publisher on a complimentary basis for official use, a **gift** incident to a public testimonial, or an invitation to a **judicial appointee** and the **judicial appointee's** spouse or guest to attend a bar-related function or an activity devoted to the administration of justice, the legal system, or improvement of the law;

(b) an award, benefit, or **gift** incident to the business, profession, or other separate activity of a spouse or

other **member of the judicial appointee's household**, including an award, benefit, or **gift** for the use of both the household member and **judicial appointee** (as spouse or household member) if the award, benefit, or **gift** could not reasonably be perceived as intended to influence the **judicial appointee** in the performance of official duties;

(c) ordinary social hospitality;

(d) a **gift** from a friend or relative for a special occasion, such as an anniversary, birthday, or wedding, if the **gift** is fairly commensurate with the occasion and the friendship or relationship;

(e) a bequest, favor, **gift**, or loan from a relative or close personal friend whose appearance or interest in a case would in any event require a recusal under Canon 3D;

(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not **judicial appointees**;

(g) a fellowship or scholarship awarded on the same terms and based on the same criteria applied to other applicants;
or

(h) any other bequest, favor, **gift**, or loan if: (1) the donor or lender is not a person whose interests have come or are likely to come before the **judicial appointee** and (2) the **judicial appointee** reports, on the **judicial appointee's** financial

disclosure form, all bequests, favors, **gifts**, and loans required under Rule 16-816 to be reported.

E. **FIDUCIARY ACTIVITIES.**

While a **judicial appointee** is not absolutely disqualified from holding a **fiduciary** position, a **judicial appointee** shall not accept or continue to hold such position if doing so would interfere or seem to interfere with the proper performance of official duties, or if the business interests of those represented require investments in enterprises that are apt to come before the **judicial appointee** officially or tend to be involved in questions to be determined by the **judicial appointee**.

F. **SERVICE AS ARBITRATOR OR MEDIATOR.**

A full-time **judicial appointee** shall not act as an arbitrator or mediator or otherwise perform official functions in a private capacity unless expressly authorized by law.

COMMENT

Canon 4F does not preclude a **judicial appointee** from participating in settlement conferences or applying methods of alternative dispute resolution that are included in the **judicial appointee's** official duties. If by reason of disclosure made during or as a result of a settlement conference or other alternative dispute resolution proceeding, the **judicial appointee's impartiality** might reasonably be questioned, the **judicial appointee** should not participate in the matter further. See Canon 3D (1).

G. PRACTICE OF LAW.

(1) Except as expressly allowed by Canon 4G, a **judicial appointee** shall not practice law. Notwithstanding this prohibition, a **judicial appointee** may act *pro se* in a matter involving the **judicial appointee** or the **judicial appointee's** interest and, if without compensation, may give legal advice to and draft or review documents for a **member of the judicial appointee's family**.

(2) To the extent not expressly prohibited by law or the appointing authority and subject to other applicable provisions of this Code, a part-time **judicial appointee** may practice law.

(3) A **judicial appointee** shall avoid conduct whereby the **judicial appointee** uses or seems to use the appointee's position to further success in the practice of law.

(4) A **judicial appointee** shall not appear as an individual in a matter involving the **judicial appointee** or the **judicial appointee's** interest in the appointing court.

(5) Prior to assuming official duties, a full-time **judicial appointee** should enter into an agreement for payments relating to the **judicial appointee's** former law practice. A payment period limited to a maximum of five years or less is presumptively reasonable.

COMMENT

Canon 4G (1) limits the practice of law in a representative capacity but not in a *pro se* capacity. A **judicial appointee** may

act for himself or herself in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with legislative and other governmental bodies. However, in so doing, a **judicial appointee** must not abuse the prestige of the position for any reason, including advancement of an interest of the **judicial appointee** or the **judicial appointee's** family. See Canons 2B and 4C (1).

This Code allows a **judicial appointee** to give legal advice to, and draft legal documents for, a **member of the judicial appointee's family**. However, except for a part-time **judicial appointee** allowed to practice law, a **judicial appointee** must not receive any compensation from, or act as an advocate or negotiator for, a **member of the judicial appointee's family** in a legal matter. A part-time **judicial appointee** must not act contrary to a prohibition of the appointing authority.

H. COMPENSATION AND REIMBURSEMENT.

Unless otherwise prohibited by law, a **judicial appointee** may receive compensation and reimbursement of expenses for extra-official activities permitted by this Code if:

(1) the source of compensation or reimbursement does not give the appearance of impropriety;

(2) the compensation does not exceed a reasonable amount and does not exceed the amount a person who is not a **judicial appointee** ordinarily would receive for the same activity; and

(3) the expense reimbursement is limited to the actual cost of food, lodging, and travel reasonably incurred by a **judicial appointee** and, if appropriate to the occasion, by the **judicial appointee's** spouse or guest.

COMMENT

Acceptance of an "**honorarium**," as defined in Code, State Government Article, §15-102 (r), is governed by Code, State Government Article, §15-505. See Judicial Ethics Opinion No. 128 (issued February 2, 2000).

A **judicial appointee** must disclose financial matters such as debts or income, investments, or other assets, only to the extent required by Canon 4H, by Canon 3D or E, or by law. See Code, State Government Article, §15-610.

CANON 5

Political Activity

A. POLITICAL CONDUCT OF **JUDICIAL APPOINTEE** WHO IS NOT CANDIDATE.

(1) A **judicial appointee** who is not a candidate for election to judicial office shall not engage in any partisan political activity.

(2) (A) Except as otherwise provided in Canon 5A (2), a **judicial appointee** shall resign the appointed position when the **judicial appointee** becomes a candidate for a non-judicial office.

(B) A **judicial appointee** may continue to hold the appointed position while a candidate for election to, or delegate in, a Maryland constitutional convention.

B. POLITICAL CONDUCT OF **JUDICIAL APPOINTEE** WHO IS CANDIDATE.

(1) A **judicial appointee** who is a candidate for election to a judicial office may engage in partisan political activity allowed by law with respect to such candidacy, except that the **judicial appointee**:

(a) shall maintain the dignity appropriate to the appointed position and act in a manner consistent with the **impartiality**, independence, and integrity of the judicial system;

(b) shall not act as a leader or hold an office in a **political organization**;

(c) shall not make a speech for a candidate or **political organization** or publicly endorse a candidate for non-judicial office;

COMMENT

A **judicial appointee** does not publicly endorse a candidate for public office by having the judicial appointee's name on the same sample ballot.

(d) with respect to a case, controversy, or issue that is likely to come before the court, shall not make a commitment, pledge, or promise that is inconsistent with the **impartial** performance of the adjudicative duties of the office;

COMMENT

Canon 5B (1)(d) does not prohibit a candidate from making a pledge or promise respecting improvements in court administration or the faithful and **impartial** performance of the duties of the office.

(e) shall not knowingly misrepresent his or her identity or qualifications, the identity or qualifications of an opponent, or any other fact; and

(f) shall not allow any other person to do for the **judicial appointee** what the **judicial appointee** is prohibited from doing.

(2) A candidate for a judicial office may respond to a personal attack or an attack on the candidate's record as long as the response does not violate Canon 5B (1).

C. STATUS OF **JUDICIAL APPOINTEE** AS CANDIDATE.

"Candidate" applies to a **judicial appointee** seeking to be elected to a judicial office from the date on which the **judicial appointee** files a certificate of candidacy in accordance with the Maryland election laws, but no earlier than two years prior to the general election for the office.

D. DISCIPLINE.

A **judicial appointee** who is an unsuccessful candidate for judicial office and who is a lawyer is subject to attorney discipline for campaign conduct. A successful candidate is subject to judicial discipline for campaign conduct.

Cross reference: See Rules 16-701 through 16-781 concerning attorney discipline and Rules 16-802 through 16-810 concerning judicial discipline.

CANON 6

Compliance

Violation of any of the Canons by a **judicial appointee** is grounds for disciplinary action, including removal by the appointing authority.

Source: This Rule is derived in part from former Rule 1232 (renumbered Rule 16-814 by Rules Order dated January 18, 1996, effective July 1, 1996) and is in part new.

MARYLAND RULES OF PROCEDURE
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS
CHAPTER 800 - MISCELLANEOUS

AMEND Rule 16-816 to require the filing of financial disclosure statements by all masters and District Court Commissioners and to make certain stylistic changes, as follows:

Rule 16-816. FINANCIAL DISCLOSURE STATEMENT - JUDICIAL APPOINTEES

a. ~~In~~ For purposes of this Rule, ~~"judicial appointee" includes a full-time judicial appointee as defined in Maryland Rule 16-814 and any~~ judicial appointee means (1) a full- or part-time master, (2) a full- or part-time commissioner appointed by a District Administrative Judge with the approval of the Chief Judge of the District Court of Maryland, and (3) an auditor, examiner, auditor, or referee, or District Court commissioner as defined in that Rule who is full-time or who earns in any calendar year, by reason of the judicial appointee's official position, compensation at least equal to the pay provided for the base step of State Pay Grade 16, as in effect on July 1 of that calendar year. ~~If a judicial appointee~~ an auditor, examiner, or referee has served as such for only a portion of a calendar year, a pro rata determination of compensation shall be applied.

Cross reference: For the definition of judicial appointee for purposes of applying the Maryland Code of Conduct for Judicial Appointees, see the Terminology section of Rule 16-814.

b. Every judicial appointee shall file with the State Court Administrator an annual financial statement on the form prescribed by the Court of Appeals. When filed, a financial disclosure statement is a public record.

. . .

d. If ~~an~~ a judicial appointee who files a certificate of candidacy for nomination for an elected office has filed a statement pursuant to §15-605 or §15-610 (b) of the State Government Article, Annotated Code of Maryland, the judicial appointee need not file for the same period of time the statement required by paragraph c of this Rule.

. . .

g. (i) A judicial appointee who fails to file a timely statement, or who files an incomplete statement, shall be notified in writing by the State Court Administrator, and given a reasonable time, not to exceed ten days, within which to correct the deficiency. If the deficiency has not been corrected within the time allowed, the State Court Administrator shall report the matter to the ~~Committee on~~ Judicial Ethics Committee.

(ii) If the Committee finds, after inquiry, that failing to file or the omission of information was either inadvertent or in good faith belief that the omitted information was not required to be disclosed, the Committee shall give the judicial appointee

a reasonable period, not to exceed 15 days, within which to correct the deficiency. Otherwise, the Committee shall refer the matter to the State Ethics Commission. If ~~an~~ a judicial appointee who has been allowed additional time within which to correct a deficiency fails to do so within that time, the matter shall also be referred to the State Ethics Commission.

. . .

Source: This Rule is derived from former Rule 1234 and is part new.

MARYLAND RULES OF PROCEDURE

APPENDIX: THE MARYLAND RULES OF PROFESSIONAL CONDUCT

ADVOCATE

AMEND Rule 3.5 to add a new subsection (a)(8) prohibiting certain discussions of potential employment of a judge under certain circumstances and to correct a certain reference in the Comment, as follows:

Rule 3.5. IMPARTIALITY AND DECORUM OF THE TRIBUNAL

(a) A lawyer shall not:

(1) seek to influence a judge, juror, prospective juror, or other official by means prohibited by law;

(2) before the trial of a case with which the lawyer is connected, communicate outside the course of official proceedings with anyone known to the lawyer to be on the list from which the jurors will be selected for the trial of the case;

(3) during the trial of a case with which the lawyer is connected, communicate outside the course of official proceedings with any member of the jury;

(4) during the trial of a case with which the lawyer is not connected, communicate outside the course of official proceedings with any member of the jury about the case;

(5) after discharge of a jury from further consideration of a case with which the lawyer is connected, ask questions of or make comments to a member of that jury that are calculated to harass

or embarrass the juror or to influence the juror's actions in future jury service;

(6) conduct a vexatious or harassing investigation of any juror or prospective juror;

(7) communicate ex parte about an adversary proceeding with the judge or other official before whom the proceeding is pending, except as permitted by law; or

(8) discuss with a judge potential employment of the judge if the lawyer or a firm with which the lawyer is associated has a matter that is pending before the judge; or

~~(8)~~ (9) engage in conduct intended to disrupt a tribunal.

(b) A lawyer who has knowledge of any violation of section (a) of this Rule, any improper conduct by a juror or prospective juror, or any improper conduct by another towards a juror or prospective juror, shall report it promptly to the court or other appropriate authority.

COMMENT

Many forms of improper influence upon a tribunal are proscribed by criminal law. Others are specified in Rule 16-813, the Maryland Canons and Rules of Judicial Ethics Code of Judicial Conduct, with which an advocate should be familiar. A lawyer is required to avoid contributing to a violation of such provisions.

The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively

than by belligerence or theatrics.

With regard to the prohibition in subsection (a)(2) of this Rule against communications with anyone on "the list from which the jurors will be selected," see Rules 2-512 (c) and 4-312 (c) of the Maryland Rules of Procedure.

Code Comparison.--With regard to Rule 3.5 (a) and (b), DR 7-108 (A) provides that "before the trial of a case a lawyer . . . shall not communicate with . . . anyone he knows to be a member of the venire" DR 7-108 (B) provides that "during the trial of a case . . . a lawyer . . . shall not communicate with . . . a juror concerning the case." DR 7-109 (C) provides that a lawyer shall not "communicate . . . as to the merits of the cause with a judge or an official before whom the proceeding is pending except . . . upon adequate notice to opposing counsel . . . (or) as otherwise authorized by law."

With regard to Rule 3.5 ~~(a)(8)~~ (a)(9), DR 7-106 (C)(6) provides that a lawyer shall not "engage in undignified or discourteous conduct which is degrading to a tribunal."

MARYLAND RULES OF PROCEDURE
APPENDIX - THE MARYLAND RULES OF
PROFESSIONAL CONDUCT

AMEND Rule 8.2 (b) and the accompanying Comment to conform them to certain language of proposed revised Canon 5B of the Maryland Code of Judicial Conduct set forth in Rule 16-813, as follows:

Rule 8.2. JUDICIAL AND LEGAL OFFICIALS

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) Canon 5C (4) of the Maryland Code of Judicial Conduct, set forth in Rule 16-813, provides that a lawyer becomes a candidate for a judicial office when the lawyer files a certificate of candidacy in accordance with Maryland election laws, but no earlier than two years prior to the general election for the office. A candidate for a judicial office: ~~position shall not make or suffer others to make for him, promises of conduct in office which appeal to the cupidity or prejudices of the appointing or electing power; he shall not announce in advance his conclusions of law on disputed issues to secure class~~

~~support, and he shall do nothing while a candidate to create the impression that if chosen, he will administer his office with bias, partiality or improper discrimination.~~

(1) shall maintain the dignity appropriate to the office and act in a manner consistent with the impartiality, independence, and integrity of the judiciary;

(2) with respect to a case, controversy, or issue that is likely to come before the court, shall not make a commitment, pledge, or promise that is inconsistent with the impartial performance of the adjudicative duties of the office;

Committee note: Rule 8.2 (b)(2) does not prohibit a candidate from making a commitment, pledge, or promise respecting improvements in court administration or the faithful and impartial performance of the duties of the office.

(3) shall not knowingly misrepresent his or her identity or qualifications, the identity or qualifications of an opponent, or any other fact;

(4) shall not allow any other person to do for the candidate what the candidate is prohibited from doing; and

(5) may respond to a personal attack or an attack on the candidate's record as long as the response does not otherwise violate this Rule.

COMMENT

Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal

offices, such as attorney general, prosecuting attorney and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.

To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.

Code Comparison.-- With regard to Rule 8.2 (a), DR 8-102 (A) provides that "A lawyer shall not knowingly make false statements of fact concerning the qualifications of a candidate for election or appointment to a judicial office." DR 8-102 (B) provides that "A lawyer shall not knowingly make false accusations against a judge or other adjudicatory officer."

~~Rule 8.2 (b) is identical to Canon XXIX of the Canons and Rules of Judicial Ethics, which is applicable to judges who are candidates for judicial office. Although the Maryland Disciplinary Rules have no counterpart to Rule 8.2 (b), DR 8-103 of the Model Code, adopted by the ABA after the Code was adopted in Maryland, is the same as Rule 8.2 (b) in substance.~~

Rule 8.2 (b) has no counterpart in the [former] Maryland Disciplinary Rules.

MARYLAND RULES OF PROCEDURE
TITLE 4 - CRIMINAL CAUSES
CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-327 to amend a certain cross reference, as follows:

Rule 4-327. VERDICT - JURY

. . .

Cross reference: See ~~Canon 3A-8~~ of Rule 16-813, (Maryland Code of Judicial Conduct), Canon 3B (1), regarding praise or criticism of a jury's verdict.

Source: This Rule is derived from former Rule 759.

MARYLAND RULES OF PROCEDURE

TITLE 5 - EVIDENCE

CHAPTER 600 - WITNESSES

AMEND Rule 5-605 to amend a certain cross reference, as follows:

Rule 5-605. COMPETENCY OF JUDGE AS WITNESS

. . .

Cross reference: See Rule 16-813, Maryland Code of Judicial Conduct, Canon ~~3E~~ 3D (1)(a) and ~~(1)~~(d)(iv).

Source: This Rule is derived from F.R.Ev. 605.

MARYLAND RULES OF PROCEDURE
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS
CHAPTER 800 - MISCELLANEOUS

AMEND Rule 16-815 to correct certain terminology in subsection f. 1, as follows:

Rule 16-815. FINANCIAL DISCLOSURE STATEMENT

. . .

f. Failure to File Statement - Incomplete Statement.

1. A judge who fails to file a timely statement, or who files an incomplete statement, shall be notified in writing by the State Court Administrator, and given a reasonable time, not to exceed ten days, within which to correct the deficiency. If the deficiency has not been corrected within the time allowed, the State Court Administrator shall report the matter to the ~~Committee on Judicial Ethics~~ Committee.

. . .

MARYLAND RULES OF PROCEDURE
TITLE 17 - ALTERNATIVE DISPUTE RESOLUTION
CHAPTER 100 - PROCEEDINGS IN CIRCUIT COURT

AMEND Rule 17-105 to amend a certain Cross reference, as follows:

Rule 17-105. QUALIFICATIONS AND SELECTION OF PERSONS OTHER THAN
MEDIATORS AND NEUTRAL EXPERTS

. . .

Cross reference: See Rules 16-813, Maryland Code of Judicial Conduct, Canon ~~4H~~ 4F and Rule 16-814, Maryland Code of Conduct for Judicial Appointees, Canon ~~4H~~ 4F.

Source: This Rule is new.