

## Maryland Judicial Ethics Committee

**Opinion Request Number:** 2003-01

**Date of Issue:** January 30, 2003

Published Opinion     Unpublished Opinion     Unpublished Letter of Advice

Fees Earned Before Appointment As Master; Acceptance of Gift

**Issues:**

1. What is the procedure for receiving fees which were earned by an attorney before appointment as a master?
2. May a master accept a \$50 gift certificate from an attorney to whom numerous cases were referred during the closing of the master's pre-appointment law practice?

**Answer:**

1. A master who was associated with a law firm at the time of appointment is urged, under Rule 16-814, Canon 4I, to submit to this Committee for approval an agreement for payment, to the master, of fees stemming from that association. A master who was a sole practitioner is not afforded this option but, in collecting previously earned fees from former clients, any master must be careful not to use the prestige of the master's office to effectuate those collections.

**Facts:** A master, who recently was appointed to this position, has outstanding earned but uncollected attorneys fees holding over from a former private practice. According to the master, the master continues to receive fees from those clients for those services previously performed. However, it is not clear from the opinion request whether the master was in a law firm or was a sole practitioner. Additionally, as part of the process of winding-up the private practice prior to assuming the position, the master referred numerous former clients to a particular attorney whom the master respected. That attorney has presented the master with a \$50 gift certificate to a retail book store as a thank you for the "kind referrals during the year." The master feels able to be objective if that attorney were to appear before the master.

**Discussion:** The first question posed involves the process of winding-up the master's practice of law. If the master was practicing as part of a law firm at the time of appointment, then the collection of attorneys fees earned prior to the appointment is controlled by the provisions of the Code of Conduct for Judicial Appointees set out in Maryland Rules of Procedure (2002 Volume), Rule 16-814, Canon 4I(3), which provides at this time<sup>1</sup>:

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<sup>1</sup> As part of a review of the Code of Judicial Conduct and the Code of Conduct for Judicial Appointees in light of a 2000 revision of the ABA's Model Code of Judicial Conduct, the Joint Ethics Committee and Standing Committee on Rules of Practice and Procedure recommended, to the Court of Appeals, deletion of the provision for review of agreements between judges or judicial appointees and law firms, as the Judicial Ethics Committee's authority extends only to the payout period and not to what could be egregious ethics problems in other provisions of the agreement, and  
(continued...)

**Maryland Judicial Ethics Committee**

**Opinion Request Number:** 2003-01

**Date of Issue:** January 30, 2003

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Page 2 of 3

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 and should submit the agreement to the Judicial Ethics Committee so that the Committee may review it as to the reasonableness of the time provided for payments to be made under the agreement. A payment period limited to a maximum of five years or less is presumptively reasonable. A longer payment period is permitted only with the Committee's prior approval as to its reasonableness. An agreement entered into under this provision may not be amended without the prior approval of the Judicial Ethics Committee.

Thus, if the master was previously a part of a law firm at the time of appointment, then the master should comply with Canon 4I(3). If, on the other hand, the master was a sole practitioner, then the master may continue to collect and receive attorneys fees directly<sup>1</sup>. However, extreme caution is advised in that the master should neither lend the prestige of the office nor give the appearance of impropriety in any collection process.

The second question which has been asked concerns the receipt of gifts in general by a master and is directly dealt with in Rule 16-814, Canon 4F, which provides in pertinent part:

F. *GIFTS.*

(1) A judicial appointee must be especially careful in accepting gifts, favors, and loans from persons not in the judicial appointee's immediate family. However innocently intended, gifts and favors from such persons, especially gifts and favors having substantial monetary value, may create an appearance that the judicial appointee could be improperly beholden to the donor. ...

A judicial appointee also is a "State official" and, therefore, an "official" for purposes of the Maryland Public Ethics Law – Maryland Code Annotated (1984, 1999 Replacement Volume), State Government Article § 15-101 *et seq.* Section 15-505 limits an official's acceptance to *inter alia* gifts not tending or designed "to impair the impartiality and independence of judgment". In the opinion request, the master states that "[w]hile I feel I can be objective if this attorney were to appear before me, I do not wish to accept [this] gesture of thanks, if it is improper". Canon 2A states that "[a] judicial appointee should behave with propriety and should avoid even the appearance of impropriety. ..." Ordinarily the receipt of gifts outside the exceptions enumerated in Canon 4 is risky at best and should only be done with extreme caution, if at all. Although the gift in question is not

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<sup>1</sup>(...continued)

the impracticality of more extensive review. The provisions were duly deleted.

<sup>1</sup> Shaman, *et al.*, *Judicial Conduct and Ethics*, 2<sup>nd</sup> Ed., Michie, 1995; and *see* Opinion 93-38 (1993), Committee on Standards of Conduct Governing Judges Opinions (Florida).

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Page 3 of 3

of “substantial monetary value”<sup>1</sup>, nonetheless, because the attorney in question might well appear before the master, in order to avoid any appearance of impropriety in the future, the gift should be respectfully declined.

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<sup>1</sup> See, e.g., [Opinion Request No. 1997-12] (February 9, 1998).