

MARYLAND COMMITTEE TO REVIEW THE 2007 MODEL CODE
OF JUDICIAL CONDUCT PROPOSED BY THE AMERICAN BAR ASSOCIATION

NOTICE OF PROPOSED RULES CHANGES
AND OPEN MEETING OF THE COURT OF APPEALS OF MARYLAND

The Maryland Committee to Review the 2007 Model Code of Judicial Conduct Proposed by the American Bar Association has submitted a Report to the Court of Appeals, transmitting thereby a proposed new Maryland Code of Judicial Conduct.

The Committee's Report and the proposed new Code are set forth below.

Interested persons are asked to consider the Committee's Report and forward on or before August 5, 2009 any written comments they may wish to make to:

Bessie M. Decker, Clerk
Court of Appeals of Maryland
Robert C. Murphy Courts of Appeal Bldg.
361 Rowe Boulevard
Annapolis, Maryland 21401

The Court will hold an open meeting on Monday, October 5, 2009 at 2:00 p.m. in the Court of Appeals' Conference Room, 4th Floor, Robert C. Murphy Courts of Appeal Building, to consider the Report.

BESSIE M. DECKER

Clerk

Court of Appeals of Maryland

REPORT
TO THE COURT OF APPEALS OF MARYLAND
OF THE MARYLAND COMMITTEE
TO REVIEW THE 2007 MODEL CODE OF JUDICIAL CONDUCT
PROPOSED BY THE AMERICAN BAR ASSOCIATION

Hon. Neil E. Axel
District Court of Maryland (Howard County)

Hon. Jean Szekeres Baron
District Court of Maryland (Prince George's
County)

Hon. Joyce Baylor-Thompson
Orphans' Court for Baltimore City

Hon. Theresa Beck
Master in Chancery, Baltimore County

Hon. Paul A. Hackner
Circuit Court for Anne Arundel County

Hon. Jeannie Jinkyung Hong
District Court of Maryland (Baltimore City)

Hon. Barbara K. Howe
Circuit Court for Baltimore County (Ret.)

Hon. Karen A. Murphy Jensen
Circuit Court for Caroline County

Hon. Louise G. Scrivener
Circuit Court for Montgomery County

Hon. J. Frederick Sharer
Court of Special Appeals (Ret.)

Hon. Alan M. Wilner
Court of Appeals (Ret.), Chair

untimely death in October, 2008, the Committee has reviewed every provision of the proposed ABA Code, the ABA Reporter's Notes to that proposed Code, to the extent the information was available what other States have done, the current Maryland Code of Judicial Conduct, relevant laws enacted by the General Assembly, and various Rules adopted by the Court that impact on judicial conduct.

In summary, the Committee recommends that the Court adopt the basic format of the 2007 ABA Code and most, but not all, of its textual provisions and comments. Most of the textual provisions and comments recommended by the Committee, whether derived from the 2007 ABA Code or otherwise, are not substantially different from what now exists in the Maryland Code of Judicial Conduct, although some substantive changes are recommended. In some instances, the Committee proposes amendments to the ABA Rules or Comments to take account of issues peculiar to Maryland e.g., the status of part-time judges of the orphans' courts or retired judges subject to recall. Somewhat in that vein, the Committee proposes a complete reorganization and rewriting of the provisions dealing with political activity, in order to focus on the differing ways in which judges in Maryland are selected and retained in office. The substance of those provisions represents, for the most part, a coalescence of the proposed ABA Rules and Comments and what currently exists in the Maryland Code of Judicial Conduct.

As noted, the format of the 2007 ABA Code is new. The 1990 Model Code and the current Maryland Code of Judicial Conduct consist of specific Canons that set forth the enforceable ethical standards required of judges, accompanied by interpretative comments. The 2007 ABA Code articulates the enforceable ethical standards in the form of Rules, to which are appended interpretative comments. It also includes general statements denominated as Canons, but those Canons are in the nature of descriptive headings of categories of Rules, rather than enforceable ethical standards. The descriptive headings are useful, but the Committee believes that referring to them as Canons is not advisable and, in light of the traditional function and perception of Canons, may create confusion. Under both the 2007 ABA Code format and the Committee's proposed format, the Rules set forth the enforceable ethical standards and the comments to those Rules provide the relevant interpretative guidance.

Because the format of the 2007 ABA Code is so different from the current Maryland Code of Judicial Conduct, it is not feasible merely to amend the current Maryland Code; as with the ABA Code, it must be completely rewritten. To assist the Court in its deliberation, this Report includes (1) the new Code recommended

by the Committee, (2) a pamphlet published by the ABA that contains the 2007 ABA Code and the accompanying ABA Reporter's Notes, and (3) a descriptive summary of the Committee's recommendation with respect to each of the ABA Rules and comments, coupled with a brief analysis of how other States have dealt with those provisions.

Respectfully submitted.

Alan M. Wilner
Chair

**MARYLAND CODE OF JUDICIAL CONDUCT
2009**

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GENERAL PROVISIONS, DEFINITIONS, AND PREAMBLE

A. GENERAL PROVISIONS

A-101 - The Maryland Code of Judicial Conduct is divided into five Parts. This introductory Part contains General Provisions, Definitions, and a Preamble. The remaining Parts, titled as Sections 1 through 4, contain both substantive Rules of Judicial Conduct that articulate specific ethical standards and Comments that provide guidance in interpreting those Rules.

Those Sections are organized as follows:

Section 1. Rules Governing Judicial Integrity and the Avoidance of Impropriety (Rules 1.1 through 1.3)

Section 2. Rules Governing the Performance of Judicial Duties (Rules 2.1 through 2.16)

Section 3. Rules Governing Non-Judicial Activities (Rules 3.1 through 3.15)

Section 4. Rules Governing Political Activity (Rules 4.1 through 4.6)

A-102 - This Code is based in large part on the 2007 Model Code of Judicial Conduct proposed by the American Bar Association (hereafter referred to as "2007 ABA Code"), although this Code differs from the 2007 ABA Code in a number of respects. Some differences are substantive; others are matters of style or organization. Three differences are worthy of general note:

Consolidation of Prefatory Provisions

This Code consolidates and reorganizes the Preamble, Scope, Application, and Terminology provisions of the 2007 ABA Code into this introductory Part on General Provisions, Definitions, and

Preamble. Although these provisions are not in the form of Rules, they are part of this Code.

Elimination of Canons

The 2007 ABA Code proposed a new and much different structure and format. The enforceable ethical commands in previous Codes were stated in the form of specific Canons, to which were appended interpretative Comments. The enforceable ethical commands in the 2007 ABA Code are stated in the form of Rules that are supplemented by interpretative Comments and headed by very brief and general statements denominated as Canons.

The 2007 ABA Code acknowledges that a judge may be disciplined only for violating a Rule, but it regards the Canons as providing guidance in interpreting the Rules. That, however, is more precisely the function of the Comments under each Rule. The Canons themselves appear to be merely descriptive of the subject matter of the Rules. To avoid any ambiguity over the significance of the Canons and to make clear that attention must be focused on the Rules and the Comments, this Code eliminates the Canons and uses instead a descriptive statement of the Rules in each Section.

Political Activity

The 2007 ABA Code contains provisions regarding political activity and financial disclosure by judges. This Code reorganizes those provisions and conforms them to the different manners in which judges are selected and retained in Maryland and

to requirements enacted by the Maryland General Assembly or adopted by the Court of Appeals. The intent is to make more clear to each judge and candidate for judicial office what is allowed and what is not allowed.

A-103 - A judge may be disciplined only for violating a Rule. If a Rule contains a permissive term, such as "may" or "should" the conduct being addressed is committed to the personal and professional discretion of the judge or candidate in question, and no disciplinary action should be taken for action or inaction within the bounds of that discretion.

Source: This provision is derived from the Scope section of the 2007 ABA Code.

A-104 - The Comments that accompany the Rules contain explanatory material and, in some instances, provide examples of permitted or prohibited conduct.

Comments neither add to nor subtract from the binding obligations set forth in the Rules. Therefore, when a Comment contains the term "must," it does not mean that the Comment itself is binding or enforceable but merely signifies that the Rule in question, properly understood, is obligatory as to the conduct at issue.

The Comments also may identify aspirational goals for judges. To implement fully the principles of this Code, judges should hold themselves to the highest ethical standards and seek to achieve those aspirational goals, thereby enhancing the dignity of the judicial office.

Source: These provisions are derived from the Scope section of the 2007 ABA Code.

A-105 - The Rules in this Code are rules of reason that should be applied in a manner consistent with Constitutional requirements, statutes, other Court Rules, and decisional law and with due regard for all relevant circumstances. The Rules should not be interpreted to impinge upon the essential **independence** of judges in making judicial decisions.

Source: This provision is derived from the Scope section of the 2007 ABA Code.

A-106 - Although the text of the Rules is binding and enforceable, it is not contemplated that every transgression will result in the imposition of discipline. Whether discipline should be imposed should be determined through a reasonable and reasoned application of the Rules and should depend upon factors such as the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity upon the judicial system or others.

Source: This provision is derived from the Scope section of the 2007 ABA Code.

A-107 - This Code is not designed or intended as a basis for civil or criminal liability. It is also not intended to be the basis for litigants to seek collateral remedies against each other or to obtain tactical advantages in proceedings before a court.

Source: This provision is derived from the Scope section of the 2007 ABA Code.

A-108 - In interpreting this Code, attention should be given to the opinions of the Judicial Ethics Committee and, if appropriate, that Committee should be asked for a written letter of advice or a binding opinion. See Rule 16-812.1 (j)(5), protecting a judge from a charge of violating an ethics provision in this Code if the judge has requested and received an opinion or advice letter from the Committee and is in compliance with that opinion or advice letter.

Source: This provision is derived from the Preamble to the former Maryland Code of Judicial Conduct.

A-109 - This Code applies to:

(1) Incumbent judges of the Court of Appeals, the Court of Special Appeals, the Circuit Courts, and the District Court;

(2) Except as otherwise expressly provided in specific Rules, incumbent judges of the Orphans' Courts;

(3) Except as otherwise expressly provided in specific Rules, retired judges who are approved for recall for temporary service pursuant to Maryland Constitution, Art. IV, §3A.; and

(4) Candidates and applicants for judicial office as defined in Rule 4.1, to the extent that a Rule expressly applies to such candidates or applicants. See Section 4 and Rule 2.11.

Source: This provision is new.

B. DEFINITIONS

B-101 - Domestic Partner

"**Domestic partner**" means a person with whom another person maintains a household and an intimate relationship, other than a person to whom he or she is legally married. See Rules 2.11, 2.13, 3.13, and 3.14.

Source: This definition is derived from the Terminology section of the 2007 ABA Code.

B-102 - Fiduciary

"**Fiduciary**" includes relationships such as administrator, attorney-in-fact by power of attorney, personal representative, and trustee. See Rules 2.11, 3.2, and 3.8.

Source: This definition is derived from the Terminology section of the 2007 ABA Code.

B-103 - Gift

(a) Except as provided in paragraph (b), "**gift**" means the transfer of anything of economic value, regardless of form, without adequate and lawful consideration.

(b) "**Gift**" does not include the solicitation, acceptance, receipt, or regulation of a political contribution that is regulated in accordance with:

- (1) the Election Law Article of the Maryland Code; or
- (2) any other Maryland law regulating the conduct of elections or the receipt of political contributions. See Rule 3.13.

Source: This definition is derived from Code, State Government Article, §15-102 (p).

B-104 - Impartial

"**Impartial**," "**impartiality**," and "**impartially**" mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge. See Rules 1.2, 2.2, 2.10, 2.11, 2.13, 3.1, 3.12, 3.13, 4.4, and 4.5.

Source: This definition is derived from the Terminology section of the 2007 ABA Code.

B-105 - Impending Matter

"**Impending matter**" means a matter that is imminent or expected to occur in the near future. See Rules 2.9, 2.10, 3.13, 4.4, and 4.5

Source: This definition is derived from the Terminology section of the 2007 ABA Code.

B-106 - Independence

"**Independence**" means a judge's freedom from influence or controls other than those established by law. See Rules 1.2, 3.1, 3.12, 3.13, 4.4, and 4.5.

Source: This definition is derived from the Terminology section of the 2007 ABA Code.

B-107 - Knowingly

"**Knowingly**," "**knowledge**," "**known**," and "**knows**" mean actual **knowledge** of the fact in question. A person's **knowledge** may be

inferred from circumstances. See Rules 2.11, 2.13, 2.15, 2.16, 3.6, and 4.4, and 4.5.

Source: This definition is derived from the Terminology section of the 2007 ABA Code.

B-108 - Member of judge's or candidate's family

"Member of a [judge's] [candidate's] family" means a spouse, **domestic partner**, child, grandchild, parent, grandparent, or other relative or person with whom the judge or candidate maintains a close familial relationship. See Rules 3.7, 3.8, 3.10, and 3.11.

Source: This definition is derived from the Terminology section of the 2007 ABA Code.

B-109 - Member of judge's or candidate's household

"Member of [judge's] [candidate's] household" means:

(a) if sharing the judge's or candidate's legal residence, the judge's or candidate's spouse, child, ward, financially dependent parent, or other financially dependent relative; or

(b) the judge's or candidate's spouse, child, ward, parent, or other relative, over whose financial affairs the judge or candidate has legal or actual control. See Rule 3.13.

Source: This definition is derived from Maryland Code, State Government Article, §15-102 (z).

B-110 - Pending matter

"Pending matter" means a matter that has commenced. A

matter continues to be pending through any appellate process until final disposition. See Rules 2.9, 2.10, 3.13, and 4.4, and 4.5.

Source: This definition is derived from the Terminology section of the 2007 ABA Code.

B-111 - Significant financial interest

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

(1) 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;

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

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

(b) In applying this definition:

(1) 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 **pending matter** or an **impending matter** that could substantially affect the value of the interest;

(2) ownership of a government security is not a **significant financial interest** in the issuer unless there is before the judge a **pending matter** or an **impending matter** that

could substantially affect the value of the security;

(3) 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 of 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 **pending matter** or an **impending matter** that could substantially affect the value of the deposit or interest; and

(4) an ownership interest in a security held by a charitable, civic, educational, fraternal, 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.

Source: This definition is derived from the former Maryland Code of Judicial Conduct.

C. PREAMBLE

C-101 - An independent, fair, competent, and **impartial** judiciary composed of men and women of integrity who will interpret and apply the law that governs our society is indispensable to our system of justice. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law.

Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.

C-102 - Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their **independence, impartiality**, integrity, and competence.

C-103 - This Code of Judicial Conduct establishes standards for the ethical conduct of judges and judicial candidates. It is not intended as an exhaustive guide for the conduct of judges and judicial candidates, who are governed in their judicial and personal conduct by general ethical standards as well as by this Code. This Code is intended, however, to provide guidance and assist judges in maintaining the highest standards of judicial and personal conduct, and to provide a basis for regulating their

conduct through disciplinary agencies.

Source: This Preamble is derived from the Preamble section of the 2007 ABA Code.

SECTION 1.

RULES GOVERNING JUDICIAL INTEGRITY AND THE AVOIDANCE OF
IMPROPRIETY

Rule 1.1. COMPLIANCE WITH THE LAW

A judge shall comply with the law, including this Code of Judicial Conduct.

Source: This Rule is derived from Rule 1.1 of the 2007 ABA Code.

Rule 1.2. PROMOTING CONFIDENCE IN THE JUDICIARY

(a) A judge shall act at all times in a manner that promotes public confidence in the **independence**, integrity, and **impartiality** of the judiciary.

(b) A judge shall avoid conduct that would create in reasonable minds a perception of impropriety.

COMMENT

[1] Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.

[2] A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by this Code.

[3] Conduct that compromises or appears to compromise the **independence**, integrity, and **impartiality** of a judge undermines public confidence in the judiciary. Because it is not practicable

to list all such conduct, the Rule is necessarily cast in general terms.

[4] Judges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.

[5] Actual improprieties include violations of law, court rules, and this Code. 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.

[6] A judge should initiate and participate in community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judge must act in a manner consistent with this Code.

Source: This Rule is derived from Rule 1.2 of the 2007 ABA Code. Comments [1], [2], [3], [4], and [6] are derived from the ABA Comments to that Rule. Comment [5] is derived in part from ABA Comment [5] to that Rule and is in part new.

Rule 1.3. AVOIDING ABUSE OF THE PRESTIGE OF JUDICIAL OFFICE

A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.

COMMENT

[1] It is improper for a judge to use or attempt to use his

or her position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials. Similarly, a judge must not use judicial letterhead to gain an advantage in conducting his or her personal business.

[2] A judge may provide a reference or recommendation for an individual based upon the judge's personal **knowledge**. The judge may use official letterhead if the judge indicates that the reference is personal and if there is no likelihood that the use of the letterhead would reasonably be perceived as an attempt to exert pressure by reason of the judicial office.

[3] Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees and by responding to inquiries from such entities concerning the professional qualifications of a person being considered for judicial office.

Cross reference: See Rule 4.3.

[4] Special considerations arise when judges write or contribute to publications of for-profit entities, whether related or unrelated to the law. A judge should not permit anyone associated with the publication of such materials to exploit the judge's office in a manner that violates this Rule or other applicable law. In contracts for publication of a judge's writing, the judge should retain sufficient control over the

advertising to avoid such exploitation.

Source: This Rule is derived from Rule 1.3 of the 2007 ABA Code. The Comments are derived from the ABA Comments to that Rule.

SECTION 2.

RULES GOVERNING THE PERFORMANCE OF JUDICIAL DUTIES

Rule 2.1. GIVING PRECEDENCE TO THE DUTIES OF JUDICIAL OFFICE

The duties of judicial office, as prescribed by law, shall take precedence over a judge's personal and extrajudicial activities.

COMMENT

[1] To ensure that judges are available to fulfill their judicial duties, judges must conduct their personal and extrajudicial activities to minimize the risk of conflicts that would result in frequent disqualification.

[2] Although it is not a duty of judicial office unless prescribed by law, judges are encouraged to participate in activities that promote public understanding of and confidence in the justice system.

[3] With respect to time devoted to personal and extrajudicial activities, this Rule must be construed in a reasonable manner. Family obligations, illnesses, emergencies, and permissible extrajudicial activities may require a judge's immediate attention. Attending to those obligations and situations, temporary in nature, is not prohibited by this Rule and should be dealt with in accordance with applicable vacation, sick leave, and administrative leave policies.

Source: This Rule is derived from Rule 2.1 of the 2007 ABA Code, except that the words "all of" in that Code have been deleted.

Comments [1] and [2] are derived from the ABA Comments to that Rule. Comment [3] is new.

Rule 2.2. IMPARTIALITY AND FAIRNESS

A judge shall uphold and apply the law, and shall perform all duties of judicial office **impartially** and fairly.

COMMENT

[1] To ensure **impartiality** and fairness to all parties, a judge must be objective and open-minded.

[2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.

[3] When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this Rule.

[4] It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.

Cross reference: See Rule 2.6 Comment [2].

Source: This Rule is derived from Rule 2.2 of the 2007 ABA Code. The Comments are derived from the ABA Comments to that Rule.

Rule 2.3. BIAS, PREJUDICE, AND HARASSMENT

(a) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

(b) A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation. A judge shall require lawyers in proceedings before the court, court staff, court officials, and others subject to the judge's direction and control to refrain from similar conduct.

(c) The restrictions of paragraph (b) do not preclude judges or lawyers from making legitimate references to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

COMMENT

[1] A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

[2] A judge must avoid conduct that may reasonably be perceived as prejudiced or biased. Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice.

[3] Harassment, as referred to in paragraph (b), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

[4] Sexual harassment includes sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome.

Source: This Rule is derived from Rule 2.3 of the 2007 ABA Code with certain style changes. The Comments are derived from the ABA Comments to that Rule with certain style changes.

Rule 2.4. EXTERNAL INFLUENCES ON JUDICIAL CONDUCT

(a) A judge shall not be swayed by public clamor or fear of criticism.

(b) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.

(c) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

COMMENT

[1] An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the

public, the media, government officials, or the judge's friends or family. Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences.

Source: This Rule is derived from Rule 2.4 of the 2007 ABA Code. The Comments are derived from the ABA Comments to that Rule.

Rule 2.5. COMPETENCE, DILIGENCE, AND COOPERATION

(a) A judge shall perform judicial and administrative duties competently, diligently, and without favoritism or nepotism.

(b) A judge shall cooperate with other judges and court officials in the administration of court business.

(c) A judge shall not wilfully fail to comply with administrative rules or reasonable directives of a judge with supervisory authority.

COMMENT

[1] Competence in the performance of judicial duties requires the legal **knowledge**, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office.

[2] A judge should seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities.

[3] 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 take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate with the judge to that end.

[4] In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

Source: Paragraphs (a) and (b) of this Rule are derived from Rule 2.5 of the 2007 ABA Code. Paragraph (c) is new. The Comments are derived from the ABA Comments to that Rule.

Rule 2.6. ENSURING THE RIGHT TO BE HEARD

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

(b) A judge may encourage parties to a proceeding and their lawyers to settle matters in dispute but shall not act in a manner that coerces any party into settlement.

COMMENT

[1] The right to be heard is an essential component of a fair and **impartial** system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.

[2] Increasingly, judges have before them unrepresented

litigants whose lack of **knowledge** about the law and about judicial procedures and requirements may inhibit their ability to be heard effectively. A judge's obligation under Rule 2.2 to remain fair and **impartial** does not preclude the judge from making reasonable accommodations to protect an unrepresented litigant's right to be heard, so long as those accommodations do not give the unrepresented litigant an unfair advantage. This Rule does not require a judge to make any particular accommodation.

[3] Settlement conferences and referrals to alternative dispute resolution may play an important role in the administration of justice. The judge plays an important role in overseeing the settlement of disputes, but should be careful that efforts to further settlement do not undermine any party's right to be heard according to law. Among the factors that a judge should consider when deciding upon an appropriate settlement practice for a case are (a) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions, (b) whether the parties and their counsel are relatively sophisticated in legal matters, (c) whether the case will be tried by the judge or a jury, (d) whether the parties participate with their counsel in settlement discussions, (e) whether any parties are unrepresented by counsel, and (f) the nature of the proceeding.

[4] Judges must be mindful of the effect settlement discussions can have, not only on their objectivity and

impartiality, but also on the appearance of their objectivity and **impartiality**. A judge should keep in mind the effect that the judge's participation in settlement discussions may have on both the judge's own views of the case and the perceptions of the lawyers and the parties if the case remains with the judge after settlement efforts are unsuccessful. Despite a judge's best efforts, there may be instances when information obtained during settlement discussions could influence a judge's decision making during trial, and, in such instances, the judge should consider whether disqualification may be appropriate. See Rule 2.11

(a)(1).

Source: This Rule is derived from Rule 2.6 of the 2007 ABA Code. Comments [1], [3], and [4] are derived from the ABA Comments to that Rule, with some modifications. Comment [2] is new.

Rule 2.7. RESPONSIBILITY TO DECIDE

A judge shall hear and decide matters assigned to the judge unless recusal is appropriate.

COMMENT

[1] Although there are times when disqualification is necessary or appropriate to protect the rights of litigants and preserve public confidence in the **independence**, integrity, and **impartiality** of the judiciary, judges must be available to decide matters that come before the courts. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the

judge's colleagues require that a judge not use disqualification to avoid cases that present difficult, controversial, or unpopular issues.

Source: This Rule is derived from Rule 2.7 of the 2007 ABA Code, but substitutes the test of whether "recusal is appropriate" for whether disqualification "is required by Rule 2.11 or other law." The Comment is derived from the ABA Comment to Rule 2.7 but adds "or appropriate" in the first sentence.

Rule 2.8. DECORUM, Demeanor, AND COMMUNICATION WITH JURORS

(a) A judge shall require order and decorum in proceedings before the court.

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

(c) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding.

COMMENT

[1] The duty to hear all proceedings with patience and courtesy is not inconsistent with the duty imposed in Rule 2.5 to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

[2] 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.

[3] A judge who is not otherwise prohibited by law from doing so may meet with jurors who choose to remain after trial but should be careful not to discuss the merits of the case.

Source: This Rule is derived from Rule 2.8 of the 2007 ABA Code. The Comments are derived from the ABA Comments to that Rule.

Rule 2.9. EX PARTE COMMUNICATIONS

(a) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or **impending matter**, except as follows:

(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

(A) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(B) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

(2) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding if the judge (A) makes provision promptly to notify all of the parties as to the expert consulted and the substance of the advice, and (B) affords

the parties a reasonable opportunity to respond.

(3) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record, and does not abrogate the responsibility personally to decide the matter.

Cross reference: See Comment [1] to Rule 3.9, permitting a judge to engage in settlement conferences.

(4) A judge may, with the consent of the parties, confer separately with the parties and their lawyers as part of a settlement conference conducted pursuant to Rules 17-102 (h) and 17-105 (b).

(5) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law to do so.

(b) If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

(c) A judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.

(d) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule is not violated by court staff, court officials, and others subject

to the judge's direction and control.

COMMENT

[1] To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

[2] Whenever the presence of a party or notice to a party is required by this Rule, 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.

[3] The proscription against communications concerning a proceeding includes communications with lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by this Rule.

[4] When serving in a problem-solving program of a Circuit Court or the District Court that was created pursuant to law, a judge may initiate, permit, and consider ex parte communications in conformance with the established protocols for the operation of the program if the parties have previously consented to those protocols.

[5] A judge may consult with other judges on **pending matters**, including a retired judge approved for recall but must avoid ex parte discussions of a case with judges who have previously been disqualified from hearing the matter, and with judges who have appellate jurisdiction over the matter.

[6] The prohibition against a judge investigating the facts in a matter extends to information available in all mediums,

including electronic.

[7] A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this Code. Such consultations are not subject to the restrictions of paragraph (a)(2).

Source: This Rule is derived in part from Rule 2.9 of the 2007 ABA Code and in part from Canon 3B (6)(e) of the former Maryland Code of Judicial Conduct. Comments [1], [2], [3], [5], [6], and [7] are derived from the ABA Comments to that Rule. Comment [4] is new.

Rule 2.10. JUDICIAL STATEMENTS ON PENDING AND IMPENDING CASES

(a) 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 or 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. This Rule 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.

(b) 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.

(c) Notwithstanding the restrictions in paragraphs (a) and (b), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any

proceeding in which the judge is a litigant in a non-judicial capacity.

COMMENT

[1] This Rule's restrictions on judicial speech are essential to the maintenance of the **independence**, integrity, and **impartiality** of the judiciary.

[2] This Rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity. In cases in which the judge is a litigant in an official capacity, such as a writ of mandamus, the judge must not comment publicly.

[3] "Court personnel," as used in paragraph (a) of this Rule does not include the lawyers in a proceeding before the judge. The comment of lawyers in this regard is governed by Rule 3.6 of the Maryland Lawyers' Rules of Professional Conduct.

Source: This Rule is derived principally from Canon 3B (8) and (9) of the former Maryland Code of Judicial Conduct, which is largely consistent with Rule 2.10 of the 2007 ABA Code. Comments [1] and [2] are derived from the ABA Comments to Rule 2.10 of the 2007 ABA Code. Comment [3] is new.

Rule 2.11. DISQUALIFICATION

(a) A judge shall disqualify himself or herself in any proceeding in which the judge's **impartiality** might reasonably be questioned, including the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal **knowledge** of

facts that are in dispute in the proceeding.

(2) The judge **knows** that the judge, the judge's spouse or **domestic partner**, or a person within the third degree of relationship to either of them, or the spouse or **domestic partner** of such a person:

(A) is a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

(B) is acting as a lawyer in the proceeding;

(C) is a person who has more than a de minimis interest that could be substantially affected by the proceeding;
or

(D) is likely to be a material witness in the proceeding.

(3) The judge **knows** that he or she, individually or as a **fiduciary**, or any of the following persons has a **significant financial interest** in the subject matter in controversy or in a party to the proceeding:

(A) the judge's spouse **or domestic partner**;

(B) a person within the third degree of relationship to the judge; or

(C) any other **member of the judge's family** residing in the judge's household.

(4) The judge, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding,

judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(5) The judge:

(A) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;

(B) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;

(C) previously presided as a judge over the matter in another court; or

(D) is a retired judge who is subject to recusal under Rule 3.9.

(b) A judge shall keep informed about the judge's personal and **fiduciary** economic interests and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children residing in the judge's household.

(c) A judge subject to disqualification under this Rule, other than for bias or prejudice under paragraph (a)(1), may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside

the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

COMMENT

[1] Under this Rule, a judge is disqualified whenever the judge's **impartiality** might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (a)(1) through (5) apply. In this Rule, "disqualification" has the same meaning as "recusal."

[2] A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

[3] 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 disqualification and, if practicable, use reasonable efforts to transfer the matter to another judge.

[4] A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.

[5] 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 request that all parties and their lawyers sign a waiver agreement.

Source: This Rule is derived in part from Rule 2.11 of the 2007 ABA Code and in part from Canon 3D of the former Maryland Code of Judicial Conduct. Comments [1], [2], and [3] are derived from the ABA Comments to Rule 2.11 of the 2007 ABA Code, with some modifications. Comments [4] and [5] are new. ABA Rule 2.11 (a)(4) and ABA Comment [6] are not included.

Rule 2.12. SUPERVISORY DUTIES

(a) A judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this Code.

(b) A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them.

COMMENT

[1] A judge is responsible for his or her own conduct and for the conduct of others, such as staff, when those persons are acting at the judge's direction or control. A judge may not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when such conduct would violate this Code if undertaken by the judge.

[2] Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a judge with supervisory authority must take the steps needed to ensure that judges under his or her supervision administer their workloads promptly.

Source: This Rule is derived from Rule 2.12 of the 2007 ABA Code. The Comments are derived from the ABA Comments to that Rule.

Rule 2.13. ADMINISTRATIVE APPOINTMENTS

(a) In making administrative appointments, a judge:

(1) shall exercise the power of appointment **impartially** and on the basis of merit; and

(2) shall avoid nepotism, favoritism, and unnecessary appointments.

(b) A judge shall not approve compensation of appointees beyond the fair value of services rendered.

COMMENT

[1] Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters,

receivers, and guardians, and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by paragraph (a).

[2] Unless otherwise defined by law, nepotism is the appointment or hiring of any relative within the third degree of relationship of either the judge or the judge's spouse or **domestic partner**, or the spouse or **domestic partner** of such relative.

Source: This Rule is derived generally from Rule 2.13 of the 2007 ABA Code, although paragraph (b) of that Rule is not included. Comments [1] and [2] are derived from the ABA Comments to that Rule, although ABA Comment [3] is not included.

Rule 2.14. DISABILITY AND IMPAIRMENT OF OTHERS

A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.

COMMENT

[1] "Appropriate action" means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a

referral to an assistance program.

[2] Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge's responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge's attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body. See Rule 2.15.

Source: This Rule is derived from Rule 2.14 of the 2007 ABA Code. The Comments are derived from the ABA Comments to that Rule.

Rule 2.15. RESPONDING TO JUDICIAL AND LAWYER MISCONDUCT

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

(b) 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.

(c) 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.

(d) Acts of a judge required or permitted by paragraphs (a), (b), and (c) of this Rule shall be absolutely privileged.

COMMENT

[1] 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.

Source: This Rule is derived from Canon 3F of the former Maryland Code of Judicial Conduct.

Rule 2.16. COOPERATION WITH DISCIPLINARY AUTHORITIES

(a) A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.

(b) A judge shall not retaliate, directly or indirectly, against a person **known** or suspected to have assisted or cooperated with an investigation of a judge or a lawyer.

COMMENT

[1] Cooperation with investigations and proceedings of judicial and lawyer discipline agencies, as required in paragraph

(a) of this Rule, instills confidence in judges' commitment to the integrity of the judicial system and the protection of the public.

Source: This Rule is derived from Rule 2.16 of the 2007 ABA Code. The Comment is derived from the ABA Comment to that Rule.

SECTION 3.

RULES GOVERNING EXTRA-JUDICIAL ACTIVITY

Rule 3.1. EXTRAJUDICIAL ACTIVITIES IN GENERAL

A judge may engage in extrajudicial activities, except as prohibited by law or this Code. When engaging in extrajudicial activities, a judge shall not:

(a) participate in activities that will interfere with the proper performance of the judge's judicial duties;

(b) participate in activities that will lead to frequent disqualification of the judge;

(c) participate in activities that would appear to a reasonable person to undermine the judge's **independence**, integrity, or **impartiality**;

(d) engage in conduct that would appear to a reasonable person to be coercive; or

(e) make inappropriate use of court premises, staff, stationery, equipment, or other resources.

COMMENT

[1] To the extent that time permits, and judicial **independence** and **impartiality** are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects. In

addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law. See Rule 3.7.

[2] Participation in both law-related and other extrajudicial activities helps integrate judges into their communities, and furthers public understanding of and respect for courts and the judicial system.

[3] Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge's official or judicial actions, are likely to appear to a reasonable person to call into question the judge's integrity and **impartiality**. Examples include jokes or other remarks that demean individuals based upon their race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, or socioeconomic status. For the same reason, a judge's extrajudicial activities must not be conducted in connection or affiliation with an organization that practices invidious discrimination. See Rule 3.6.

[4] While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive. For example, depending upon the circumstances, a judge's solicitation of contributions or memberships for an organization, even as permitted by Rule 3.7 (a), might create the risk that the person solicited would feel

obligated to respond favorably, or would do so to curry favor with the judge.

Source: This Rule is derived from Rule 3.1 of the 2007 ABA Code, except as to paragraph (5), which is new. The Comments are derived from the ABA Comments to that Rule.

Rule 3.2. APPEARANCES BEFORE GOVERNMENTAL BODIES AND CONSULTATION WITH GOVERNMENT OFFICIALS

A judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official, except:

(a) in connection with matters concerning the law, the legal system, or the administration of justice;

(b) in connection with matters about which the judge acquired **knowledge** or expertise in the course of the judge's judicial duties; or

(c) when the judge is acting pro se in a matter involving the judge's legal or economic interests, or when the judge is acting in a **fiduciary** capacity.

COMMENT

[1] Judges possess special expertise in matters of law, the legal system, and the administration of justice, and may properly share that expertise with governmental bodies and executive or legislative branch officials.

[2] In appearing before governmental bodies or consulting with government officials, judges must be mindful that they

remain subject to other provisions of this Code, such as Rule 1.3, prohibiting judges from using the prestige of office to advance their own or others' interests, Rule 2.10, governing public comment on pending and **impending matters**, and Rule 3.1 (c), prohibiting judges from engaging in extrajudicial activities that would appear to a reasonable person to undermine the judge's **independence**, integrity, or **impartiality**.

[3] In general, it would be an unnecessary and unfair burden to prohibit judges from appearing before governmental bodies or consulting with government officials on matters that are likely to affect them as private citizens, such as zoning proposals affecting their real property. In engaging in such activities, however, judges must not refer to their judicial positions, and must otherwise exercise caution to avoid using the prestige of judicial office.

Source: This Rule is derived from Rule 3.2 of the 2007 ABA Code. The Comments are derived from the ABA Comments to that Rule.

Rule 3.3. TESTIFYING AS A CHARACTER WITNESS

A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly summoned.

COMMENT

[1] A judge who, without being subpoenaed, testifies as a character witness abuses the prestige of judicial office to

advance the interests of another. See Rule 1.3. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

Source: This Rule is derived from Rule 3.3 of the 2007 ABA Code. The Comment is derived from the ABA Comment to that Rule.

Rule 3.4. APPOINTMENT TO GOVERNMENTAL POSITIONS

A judge shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless it is one that concerns the law, the legal system, or the administration of justice.

COMMENT

[1] Rule 3.4 implicitly acknowledges the value of judges accepting appointments to entities that concern the law, the legal system, or the administration of justice. Even in such instances, however, a judge should assess the appropriateness of accepting an appointment, paying particular attention to the subject matter of the appointment and the availability and allocation of judicial resources, including the judge's time commitments, and giving due regard to the requirements of the **independence** and **impartiality** of the judiciary.

[2] 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 or hold another "office" under the Constitution or laws of the

United States or the State of Maryland. See Maryland Declaration of Rights, Articles 8, 33, and 35.

[3] A judge may represent his or her country, State, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities. Such representation does not constitute acceptance of a government position.

Committee note: Although the Judicial Ethics Committee has concluded that the Supremacy Clause of the U.S. Constitution 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, the Attorney General, rather than the Judicial Ethics Committee, traditionally has rendered opinions with regard to issues of dual or incompatible offices.

Source: This Rule is derived from Rule 3.4 of the 2007 ABA Code. Comments [1] and [3] are derived from the ABA Comments to that Rule. Comment [2] and the Committee note are derived from the Comment and Committee note to Canon 4C of the former Maryland Code of Judicial Conduct.

Rule 3.5. USE OF NONPUBLIC INFORMATION

A judge shall not intentionally disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge's judicial duties. Nonpublic information means information that is not available to the public. It may include information that is (a) sealed or shielded pursuant to law or court order, (b) impounded, (c) communicated in camera, or (d) offered in grand jury proceedings, pre-sentencing reports, dependency cases, or psychiatric reports.

COMMENT

[1] In the course of performing judicial duties, a judge may acquire information of commercial or other value that is unavailable to the public. The judge must not reveal or use such information for personal gain or for any purpose unrelated to his or her judicial duties.

[2] This Rule is not intended, however, to affect a judge's ability to act on information as necessary to protect the health or safety of the judge or a **member of a judge's family**, court personnel, or other judicial officers.

Source: The first sentence of this Rule is derived from Rule 3.5 of the 2007 ABA Code. The second sentence is derived from the Terminology section of the 2007 ABA Code. The Comments are derived from the ABA Comments to Rule 3.5 of the 2007 ABA Code, except that Comment [2] is modified to eliminate the words "if consistent with other provisions of this Code."

Rule 3.6. AFFILIATION WITH DISCRIMINATORY ORGANIZATIONS

(a) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation.

(b) A judge shall not use the benefits or facilities of an organization if the judge **knows** or should know that the organization practices invidious discrimination on one or more of the bases identified in paragraph (a). A judge's attendance at an event in a facility of an organization that the judge is not permitted to join is not a violation of this Rule when the

judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.

COMMENT

[1] A judge's public manifestation of approval of invidious discrimination on any basis gives rise to the appearance of impropriety and diminishes public confidence in the integrity and **impartiality** of the judiciary. A judge's membership in an organization that practices invidious discrimination creates the perception that the judge's **impartiality** is impaired.

[2] An organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation persons who would otherwise be eligible for admission. Whether an organization practices invidious discrimination is a complex question to which judges should be attentive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather, depends upon how the organization selects members, as well as other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is an intimate, purely private organization whose membership limitations could not constitutionally be prohibited.

[3] When a judge learns that an organization to which the judge belongs engages in invidious discrimination, the judge must

resign immediately from the organization.

[4] A judge's membership in a religious organization as a lawful exercise of the freedom of religion is not a violation of this Rule.

[5] This Rule does not apply to national or state military service.

Source: This Rule is derived from Rule 3.6 of the 2007 ABA Code. The Comments are derived from the ABA Comments to that Rule.

Rule 3.7. PARTICIPATION IN EDUCATIONAL, RELIGIOUS, CHARITABLE, FRATERNAL, OR CIVIC ORGANIZATIONS AND ACTIVITIES

(a) Subject to the requirements of Rules 3.1 and 3.6, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including the following activities:

(1) assisting such an organization or entity in planning related to fund-raising, and participating in the management and investment of the organization's or entity's funds;

(2) soliciting contributions for such an organization or entity, but only from **members of the judge's family**, or from judges over whom the judge does not exercise supervisory or appellate authority;

(3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice;

(4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may participate only if the event concerns the law, the legal system, or the administration of justice;

(5) making recommendations to such a public or private fund-granting organization or entity in connection with its programs and activities, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice; and

(6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:

(A) will be engaged in proceedings that would ordinarily come before the judge; or

(B) will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

(b) A judge may encourage but not coerce lawyers to provide pro bono publico legal services.

COMMENT

[1] The activities permitted by paragraph (a) generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions, and other not-for-profit organizations, including law-related, charitable, and other organizations.

[2] Even for law-related organizations, a judge should consider whether the membership and purposes of the organization, or the nature of the judge's participation in or association with the organization, would conflict with the judge's obligation to refrain from activities that reflect adversely upon a judge's **independence**, integrity, and **impartiality**.

[3] Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a violation of paragraph (a)(4). It is also generally permissible for a judge to serve as an usher or a food server or preparer, or to perform similar functions, at fund-raising events sponsored by educational, religious, charitable, fraternal, or civic organizations. Such activities are not solicitation and do not present an element of coercion or abuse the prestige of judicial office.

[4] Identification of a judge's position in educational, religious, charitable, fraternal, or civic organizations on

letterhead used for fund-raising or membership solicitation does not violate this Rule. The letterhead may list the judge's title or judicial office if comparable designations are used for other persons.

[5] In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono publico legal services, if in doing so the judge does not employ coercion, or abuse the prestige of judicial office. Such encouragement may take many forms, including providing lists of available programs, training lawyers to do pro bono publico legal work, and participating in events recognizing lawyers who have done pro bono publico work.

Source: This Rule is derived from Rule 3.7 of the 2007 ABA Code with some modifications. The Comments are derived from the ABA Comments to that Rule.

Rule 3.8. APPOINTMENTS TO FIDUCIARY POSITIONS

(a) A judge shall not accept appointment to serve in a **fiduciary** position, such as executor, administrator, trustee, guardian, attorney in fact, or other personal representative, except for the estate, trust, or person of a **member of the judge's family**, and then only if such service will not interfere with the proper performance of judicial duties.

(b) A judge shall not serve in a **fiduciary** position if the judge as **fiduciary** will likely be engaged in proceedings that

would ordinarily 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 one under its appellate jurisdiction.

(c) A judge acting in a **fiduciary** capacity shall be subject to the same restrictions on engaging in financial activities that apply to a judge personally.

(d) If a person who is serving in a **fiduciary** position becomes a judge, he or she must comply with this Rule as soon as reasonably practicable, but in no event later than one year after becoming a judge.

(e) Paragraph (a) of this Rule does not apply to retired judges approved for recall under Maryland Constitution, Article IV, §3A.

COMMENT

[1] A judge should recognize that other restrictions imposed by this Code may conflict with a judge's obligations as a **fiduciary**; in such circumstances, a judge should resign as **fiduciary**. For example, serving as a **fiduciary** might require frequent disqualification of a judge under Rule 2.11 because a judge is deemed to have an economic interest in shares of stock held by a trust if the amount of stock held is more than de minimis.

Source: Paragraphs (a) through (d) of this Rule are derived from Rule 3.8 of the 2007 ABA Code. Paragraph (e) is derived from Canon 6C of the Maryland Code of Judicial Conduct. The Comment is derived from the ABA Comment to Rule 3.8 of the 2007 ABA Code.

Rule 3.9. SERVICE AS ARBITRATOR OR MEDIATOR

(a) A judge shall not act as an arbitrator or a mediator or perform other judicial functions apart from the judge's official duties unless expressly authorized by law.

(b) A retired judge who is approved for recall for temporary service under Maryland Constitution, Article IV, §3A may conduct alternative dispute resolution (ADR) proceedings in a private capacity only if the judge:

(1) conducts no ADR proceedings in a private capacity relating to a case in which the judge currently is presiding;

(2) is not affiliated with a law firm, regardless of whether the law firm also offers ADR services;

(3) discloses to the parties in each judicial proceeding over which the judge presides:

(A) the judge's professional association with any entity that is engaged in offering ADR services;

(B) whether the judge is conducting, or has conducted within the previous 12 months, an ADR proceeding involving any party, attorney, or law firm involved in the judicial proceeding pending before the judge; and

(C) any negotiations or agreements for future ADR services involving the judge and any of the parties or counsel to the case; and

(4) except if there is non-recusal by agreement as permitted by Rule 2.11 (c), does not preside over a judicial

proceeding in which the judge's **impartiality** might reasonably be questioned because of ADR services engaged in or offered by the judge.

Committee note: A retired judge approved for recall may affiliate with an entity that exclusively is engaged in offering ADR services but may not affiliate with any entity that also is engaged in the practice of law.

COMMENT

[1] Except as provided in paragraph (b), this Rule does not prohibit a judge from participating in arbitration, mediation, or settlement conferences performed as part of assigned judicial duties. Rendering dispute resolution services apart from those duties, whether or not for economic gain, is prohibited unless it is expressly authorized by law.

Source: Paragraph (a) of this Rule is derived from Rule 3.9 of the 2007 ABA Code. Paragraph (b) and the Committee note are derived from Canon 4F (2) of the former Maryland Code of Judicial Conduct and the Committee note thereto. The Comment is derived from the ABA Comment to Rule 3.9 of the 2007 ABA Code.

Rule 3.10. PRACTICE OF LAW

(a) In General

Except as expressly allowed by this Rule, a judge shall not practice law.

(b) Exceptions

(1) 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) To the extent expressly allowed by law and subject to other applicable provisions of this Code, a part-time judge of an orphans' court who is a lawyer may practice law, provided that:

(A) the judge shall not use the judge's judicial office to further the judge's success in the practice of law; and

(B) the judge 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 if another judge is presiding.

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.

COMMENT

[1] A judge may act pro se in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. A judge must not use the prestige of office to advance the judge's personal or family interests. See Rule 1.3.

[2] Paragraphs (a) and (b)(1) of this Rule limit 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. In so doing, however, 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 Rules 2.4 (b) and 3.2 (c).

[3] This Rule allows a judge to give legal advice to, and draft legal documents for, a **member of the judge's family**. Except for a part-time orphans' court judge allowed to practice law, however, 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.

Source: This Rule is derived from Canon 4G of the former Maryland Code of Judicial Conduct. Comment [1] is derived from the ABA Comment to Rule 3.10 of the 2007 ABA Code. Comments [2] and [3] are derived from the Comment to Canon 4G of the former Maryland Code of Judicial Conduct.

Rule 3.11. FINANCIAL, BUSINESS, OR REMUNERATIVE ACTIVITIES

(a) A judge may hold and manage investments of the judge and **members of the judge's family**.

(b) Except as permitted by Rule 3.7, a judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that a judge may manage or participate in:

(1) a business closely held by the judge or **members of the judge's family**; or

(2) a business entity primarily engaged in investment of the financial resources of the judge or **members of the judge's family**.

(c) A judge shall not engage in financial activities

permitted under paragraphs (a) or (b) if they will:

(1) interfere with the proper performance of judicial duties;

(2) lead to frequent disqualification of the judge;

(3) 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; or

(4) result in violation of other provisions of this Code.

(d) This Rule does not apply to retired judges approved for recall under Maryland Constitution, Article IV, §3A.

COMMENT

[1] Judges are generally permitted to engage in financial activities, including managing real estate and other investments for themselves or for members of their families. Participation in these activities, like participation in other extrajudicial activities, is subject to the requirements of this Code. For example, it would be improper for a judge to spend so much time on business activities that it interferes with the performance of judicial duties. See Rule 2.1. Similarly, it would be improper for a judge to use his or her official title or appear in judicial robes in business advertising, or to conduct his or her business or financial affairs in such a way that disqualification is frequently required. See Rules 1.3 and 2.11.

[2] As soon as practicable without serious financial

detriment, the judge must divest himself or herself of investments and other financial interests that might require frequent disqualification or otherwise violate this Rule.

Source: Paragraphs (a), (b), and (c) of this Rule are derived from Rule 3.11 of the 2007 ABA Code and the Comments are derived from the ABA Comments to that Rule. Paragraph (d) is derived from Canon 6C of the former Maryland Code of Judicial Conduct.

Rule 3.12. Compensation for Extrajudicial Activities

A judge may accept reasonable compensation for extrajudicial activities permitted by this Code or other law unless such acceptance would appear to a reasonable person to undermine the judge's **independence**, integrity, or **impartiality**.

Cross reference: See Rule 3.9 requiring certain disclosures and action by retired judges approved for recall who provide alternative dispute resolution services.

COMMENT

[1] A judge is permitted to accept honoraria, stipends, fees, wages, salaries, royalties, or other compensation for speaking, teaching, writing, and other extrajudicial activities, provided the compensation is reasonable and commensurate with the task performed. The judge should be mindful, however, that judicial duties must take precedence over other activities. See Rule 2.1, Code, Family Law Article, §§2-406 and 2-410, and Md. Rules 16-821 through 16-824.

[2] Compensation derived from extrajudicial activities may be subject to public reporting. See Rule 3.15.

Source: This Rule is derived from Rule 3.12 of the 2007 ABA

Code. The Comments are derived from the ABA Comments to that Rule.

Rule 3.13. ACCEPTANCE OF GIFTS, LOANS, BEQUESTS, BENEFITS, OR OTHER THINGS OF VALUE

(a) A judge shall not accept any **gifts**, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law or would appear to a reasonable person to undermine the judge's **independence**, integrity, or **impartiality**.

(b) Unless otherwise prohibited by law, or by paragraph (a), a judge may accept the following:

(1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;

(2) **gifts**, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending or impending before the judge would in any event require disqualification of the judge under Rule 2.11;

(3) ordinary social hospitality;

(4) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;

(5) rewards and prizes given to competitors or participants in random drawings, contests, or other events that

are open to persons who are not judges;

(6) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not judges, based upon the same terms and criteria;

(7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use; or

(8) **gifts**, awards, or benefits associated with the business, profession, or other separate activity of a spouse, a **domestic partner**, or other family member of a judge residing in the judge's household, but that incidentally benefit the judge.

(c) Unless otherwise prohibited by law or by paragraph (a), a judge may accept the following items:

(1) **gifts** incident to a public testimonial;

(2) invitations to the judge and the judge's spouse, **domestic partner**, or guest to attend without charge:

(A) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or

(B) an event associated with any of the judge's educational, religious, charitable, fraternal or civic activities permitted by this Code, if the same invitation is offered to nonjudges who are engaged in similar ways in the activity as is the judge; and

(3) **gifts**, loans, bequests, benefits, or other things

of value, if the source is a party or other person, including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge.

COMMENT

[1] Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the judge's decision in a case. Rule 3.13 imposes restrictions upon the acceptance of such benefits, according to the magnitude of the risk. Paragraph (b) identifies circumstances in which the risk that the acceptance would appear to undermine the judge's **independence**, integrity, or **impartiality** is low, and explicitly provides that such items need not be publicly reported. As the value of the benefit or the likelihood that the source of the benefit will appear before the judge increases, the judge is prohibited under paragraph (a) from accepting the gift.

[2] Gift-giving between friends and relatives is a common occurrence, and ordinarily does not create an appearance of impropriety or cause reasonable persons to believe that the judge's **independence**, integrity, or **impartiality** has been compromised. In addition, when the appearance of friends or relatives in a case would require the judge's disqualification under Rule 2.11, there would be no opportunity for a gift to influence the judge's decision making. Paragraph (b)(2) places no restrictions upon the ability of a judge to accept **gifts** or

other things of value from friends or relatives under these circumstances, and does not require public reporting.

[3] Businesses and financial institutions frequently make available special pricing, discounts, and other benefits, either in connection with a temporary promotion or for preferred customers, based upon longevity of the relationship, volume of business transacted, and other factors. A judge may freely accept such benefits if they are available to the general public, or if the judge qualifies for the special price or discount according to the same criteria as are applied to persons who are not judges. As an example, loans provided at generally prevailing interest rates are not **gifts**, but a judge could not accept a loan from a financial institution at below-market interest rates unless the same rate was being made available to the general public for a certain period of time or only to borrowers with specified qualifications that the judge also possesses.

[4] Rule 3.13 applies only to acceptance of **gifts** or other things of value by a judge. Nonetheless, if a gift or other benefit is given to the judge's spouse, **domestic partner**, or **member of the judge's family** residing in the judge's household, it may be viewed as an attempt to evade Rule 3.13 and influence the judge indirectly. Where the gift or benefit is being made primarily to such other persons, and the judge is merely an incidental beneficiary, this concern is reduced. A judge should,

however, remind family and household members of the restrictions imposed upon judges, and urge them to take these restrictions into account when making decisions about accepting such **gifts** or benefits.

[5] Rule 3.13 does not apply to contributions to a judge's campaign for judicial office. Such contributions are governed by other Rules of this Code, including Rules 4.3 and 4.4.

Source: This Rule is derived from Rule 3.13 of the 2007 ABA Code, except that provisions relating to the reporting of **gifts** are covered in Rule 3.15. The Comments are derived from the ABA Comments to Rule 3.13 of the 2007 ABA Code.

Rule 3.14. REIMBURSEMENT OF EXPENSES AND WAIVERS OF FEES OR CHARGES

(a) Unless otherwise prohibited by Rules 3.1 and 3.13 (a) or other law, a judge may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items, from sources other than the judge's employing entity, if the expenses or charges are associated with the judge's participation in extrajudicial activities permitted by this Code.

(b) Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs reasonably incurred by the judge and, when appropriate to the occasion, by the judge's spouse, **domestic partner**, or guest.

(c) A judge who accepts reimbursement of expenses or waivers or partial waivers of fees or charges on behalf of the judge or the judge's spouse, **domestic partner**, or guest shall publicly report such acceptance as required by Rule 3.15.

COMMENT

[1] Educational, civic, religious, fraternal, and charitable organizations often sponsor meetings, seminars, symposia, dinners, awards ceremonies, and similar events. Judges are encouraged to attend educational programs, as both teachers and participants, in law-related and academic disciplines, in furtherance of their duty to remain competent in the law. Participation in a variety of other extrajudicial activity is also permitted and encouraged by this Code.

[2] Not infrequently, sponsoring organizations invite certain judges to attend seminars or other events on a fee-waived or partial-fee-waived basis, and sometimes include reimbursement for necessary travel, food, lodging, or other incidental expenses. A judge's decision whether to accept reimbursement of expenses or a waiver or partial waiver of fees or charges in connection with these or other extrajudicial activities must be based upon an assessment of all the circumstances. The judge must undertake a reasonable inquiry to obtain the information necessary to make an informed judgment about whether acceptance would be consistent with the requirements of this Code.

[3] A judge must assure himself or herself that acceptance

of reimbursement or fee waivers would not appear to a reasonable person to undermine the judge's **independence**, integrity, or **impartiality**. The factors that a judge should consider when deciding whether to accept reimbursement or a fee waiver for attendance at a particular activity include:

(a) whether the sponsor is an accredited educational institution or bar association rather than a trade association or a for-profit entity;

(b) whether the funding comes largely from numerous contributors rather than from a single entity and is earmarked for programs with specific content;

(c) whether the content is related or unrelated to the subject matter of litigation pending or impending before the judge, or to matters that are likely to come before the judge;

(d) whether the activity is primarily educational rather than recreational, and whether the costs of the event are reasonable and comparable to those associated with similar events sponsored by the judiciary, bar associations, or similar groups;

(e) whether information concerning the activity and its funding sources is available upon inquiry;

(f) whether the sponsor or source of funding is generally associated with particular parties or interests currently appearing or likely to appear in the judge's court, thus possibly requiring disqualification of the judge under Rule 2.11;

(g) whether differing viewpoints are presented; and

(h) whether a broad range of judicial and nonjudicial participants are invited, whether a large number of participants are invited, and whether the program is designed specifically for judges.

Source: This Rule is derived from Rule 3.14 of the 2007 ABA Code. The Comments are derived from the ABA Comments to that Rule.

Rule 3.15. REPORTING REQUIREMENTS

A judge must accurately complete and timely file an annual Statement of Financial Interests on the form and as otherwise prescribed by the Court of Appeals pursuant to Md. Rule 16-815.

Source: This Rule is derived from Md. Rule 16-815.

SECTION 4.

RULES GOVERNING POLITICAL ACTIVITY

Rule 4.1. DEFINITIONS

(a) **Applicant**

(1) "**Applicant**" means a person who has applied for appointment by the Governor to a judicial office.

(2) The person becomes an **applicant** when the person files an application with a judicial nominating commission and remains an **applicant** until the Governor makes an appointment to that judicial office unless, prior to that time, the person formally withdraws the application.

(3) If the person is not appointed but, pursuant to an Executive Order of the Governor or other law, remains eligible for appointment to another judicial office without a further application to or recommendation from the judicial nominating commission, the person remains an **applicant** until the Governor makes an appointment to that other judicial office, unless, prior to that time, the person formally withdraws the application.

Cross reference: Executive Order 01.01.2008.04

(b) **Candidate**

"**Candidate**" means a **candidate for election** or a **District Court candidate for retention**.

(c) **Candidate for election**

(1) "**Candidate for election**" means a person who:

(A) seeks initial election to a Circuit Court or an Orphans' Court;

(B) is an incumbent judge of a Circuit Court or Orphans' Court and seeks to retain that office through an election conducted pursuant to Art. IV, § 3, 5, or 40 of the Maryland Constitution; or

(C) is an incumbent judge of the Court of Appeals or Court of Special Appeals and seeks to retain that office through a retention election conducted pursuant to Art. IV, §5A of the Maryland Constitution.

(2) A person becomes a **candidate for election**:

(A) as to a newly appointed judge, from the date the judge takes the oath of office;

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

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

(ii) the date on which a newly appointed judge to that court becomes a **candidate** in the same general election.

(C) as to a judge who seeks election to another judicial office, the earlier of:

(i) 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

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

(D) as to a lawyer who seeks 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.

(3) A person who becomes a **candidate** under paragraph (c) remains a **candidate** until the general election for the office unless, prior to that time, the person files a formal withdrawal of candidacy in accordance with Maryland election laws.

(d) **District Court Candidate for Retention**

"**District Court candidate for retention**" means an incumbent judge of the District Court who seeks retention for an additional term pursuant to Art. IV, §41D of the Maryland Constitution. A District Court judge becomes a **candidate** for retention from the date one year prior to the expiration of the judge's current term.

(e) **Political organization**

"**Political organization**" includes a political party, a political committee, and a partisan organization, as those terms are defined in Maryland Code, Election Article, §1-101.

Source: These definitions are new.

COMMENT

[1] This Rule is new. It is intended to reflect and focus on the different ways in which judges in Maryland are selected and retained. See Maryland Constitution, Art. IV, §5A (appellate judges), §§3 and 5 (Circuit Court judges), §41D (District Court judges), and §40 (Orphans' Court judges).

(a) In all cases, a vacancy is filled by appointment by the Governor. The appointment of appellate, District Court, and Orphans' Court judges requires the advice and consent of the Senate; the appointment of Circuit Court judges does not.

(b) Appellate judges then face an uncontested plebiscite election (yes or no for continuance in office) for an additional 10-year term, following which they face another such election for a succeeding term.

(c) Circuit Court judges face a potentially contested primary and general election for a 15-year term, at the end of which, in order to remain in office, they must be appointed by the Governor for a "bridge" term until the next election and then prevail in that election.

(d) District Court judges do not face election but receive a 10-year term, at the end of which, they must be reappointed by the Governor subject to confirmation by the Senate.

(e) Orphans' Court judges face a potentially contested primary and general election every four years.

[2] The first context, applicable to all appellate, Circuit Court, and District Court judges and many Orphans' Court judges, is initial appointment by the Governor to fill a vacancy. Except for Orphans' Court judges, that requires an application to and consideration by a judicial nominating commission, which normally interviews the **applicants**, receives information and recommendations from Bar Associations, other interested groups, and members of the public, and sends to the Governor a list of recommended **applicants**. The Governors have agreed, expressly or tacitly, to appoint from the list of applicants recommended by the applicable nominating commission. The applicants may be lawyers seeking initial appointment to the Bench, incumbent Circuit Court judges seeking reappointment, upon the expiration of their 15-year term, for a "bridge" period until the next election, or other judges seeking appointment to a different court. Rule 4.1 (a) defines those persons as "**applicants.**"

[3] A person seeking election, either through a potentially contested election (Circuit Court and Orphans' Court) or through a plebiscite-type retention election (appellate judges), is defined in Rule 4.1 (c) as a "**candidate for election.**" A District Court judge, at the end of the 10-year term, faces confirmation by the Senate for an additional term. That judge is not a **candidate for election** but is defined in Rule 4.1 (d) as a "**District Court candidate for retention.**"

[4] The remaining Rules in Section 4 specify the political

activity allowed or not allowed to persons falling within those categories, as well as to incumbent judges who are not within any of them.

[5] Even when subject to election, a judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based on the expressed views or preferences of the electorate, a judge makes decisions based on the law and the facts of each case. In furtherance of that interest, judges and **candidates** for judicial office must, to the greatest extent possible, be free and appear to be free from political influence and political pressure. The Rules in Section 4 impose narrowly tailored restrictions on the political and campaign activities of all judges and **candidates** for judicial office.

Source: This Rule and Comments [1] through [4] are new. Comment [5] is derived from ABA Comment [1] to Rule 4.1 of the 2007 ABA Code.

Rule 4.2. POLITICAL CONDUCT OF JUDGE WHO IS NOT A CANDIDATE

(a) A judge who is not a **candidate** shall not engage in any partisan political activity.

(b) A judge shall resign when the judge becomes a **candidate** for a non-judicial office, except that a judge may continue to hold judicial office while a **candidate for election** as a delegate to a Maryland Constitutional Convention.

Source: Rule 4.2 is derived from former Md. Code of Judicial Conduct Canon 5A.

Rule 4.3. POLITICAL CONDUCT OF APPLICANT

An **applicant** for judicial office may not initiate communications or contact with a judicial nominating commission or its members but may seek endorsements for the appointment from any other person or organization, other than a **political organization**.

COMMENT

[1] Rule 4.3 is derived in part from Rule 4.5 of the 2007 ABA Code but departs from it in one important respect. Under Rule 4.3, an **applicant** may not initiate communications or contact with a judicial nominating commission or its members. Personal lobbying of commission members by the **applicant**, some of whom are lawyers, is not appropriate. **Applicants** may appear for interviews before the commission and may respond to questions or inquiries from commission members, and they may solicit endorsements from other persons or organizations (other than a **political organization**). If they have a question regarding the procedure or their application, they may contact the Administrative Office of the Courts, which acts as a secretariate to the commissions.

Rule 4.4. POLITICAL CONDUCT OF CANDIDATE FOR ELECTION

A **candidate for election**:

(a) shall comply with all applicable election laws and regulations;

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

(c) subject to the other provisions of this Rule, may engage in partisan political activity allowed by law with respect to such candidacy, and, in that regard:

(1) may publicly endorse or oppose **candidates** for the same judicial office;

(2) may attend or purchase tickets for dinners or other events sponsored by a **political organization** or a **candidate** for public office; and

(3) may seek, accept, and use endorsements from any person or organization; but

(4) shall not act as a leader in or hold office in a **political organization**, make a speech for a **candidate** or **political organization**, or publicly endorse a **candidate** for non-judicial office.

(d) As to statements and materials made or produced during a campaign:

(1) shall review, approve, and be responsible for the content of all campaign statements and materials produced by the **candidate** or by the **candidate's** campaign committee or other authorized agents;

(2) shall take reasonable measures to ensure that other persons do not undertake on behalf of the **candidate** activities that the **candidate** is prohibited from doing by this Rule;

(3) 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;

(4) shall not make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court;

(5) shall not **knowingly**, or with reckless disregard for the truth, misrepresent the **candidate's** identity or qualifications, the identity or qualifications of an opponent, or any other fact, or make any false or misleading statement;

(6) may speak or write on behalf of the **candidate's** candidacy through any medium, including advertisements, websites, or other campaign literature; and

(7) subject to paragraph (b) of this Rule, may respond to a personal attack or an attack on the **candidate's** record.

COMMENT

[1] This Rule is derived in part from former Md. Code of Judicial Conduct Canon 5B and from the 2007 ABA Code, but it has been substantially reorganized into three basic segments: general requirements (paragraphs (a) and (b)); the extent to which **candidates** for election may engage in partisan political conduct

(paragraph (c)); and the rules governing campaign statements (paragraph (d)).

[2] Rule 4.4 (a) requires **candidates** for election to comply with all election laws and regulations. The Election Law Article of the Maryland Code contains laws governing **candidates**, campaign contributions, finance, expenditures, and reporting. Those requirements are supplemented by regulations adopted by the State Board of Elections. **Candidates** for election must become familiar with applicable laws and regulations and comply with them.

[3] Public confidence in the **independence** and **impartiality** of the judiciary is eroded if judges or **candidates** for judicial office are perceived to be subject to political influence. Although they may register to vote as members of a political party, they are prohibited by Rule 4.4 (c)(4) from assuming leadership roles in **political organizations**.

[4] Rule 4.4 (c)(4) also prohibits **candidates** for election from making speeches on behalf of **political organizations** or publicly endorsing or opposing **candidates** for public office, to prevent them from abusing the prestige of judicial office to advance the interests of others. See Rule 1.3. Rule 4.4 does not prohibit **candidates** for election from (a) campaigning on their own behalf, (b) endorsing or opposing **candidates** for election to the same judicial office for which they are running, or (c) from having their name on the same sample ballot as a **candidate** for another public office.

[5] Although members of the families of **candidates** for election are free to engage in their own political activity, including running for public office, there is no "family exception" to the prohibition in Rule 4.4 (c)(4) against publicly endorsing **candidates** for public office. A **candidate for election** must not become involved in, or be publicly associated with, a family member's political activity or campaign for public office. To avoid public misunderstanding, **candidates** for election should take, and should urge members of their families to take, reasonable steps to avoid any implication that they endorse any family member's candidacy or other political activity.

[6] Judicial **candidates** must be scrupulously fair and accurate in all statements made by them and by their campaign committees. Rule 4.4 (d)(5) obligates them to refrain from making statements that are false or misleading, or that omit facts necessary to make the communication considered as a whole not materially misleading. Rule 4.4 (d)(1) requires the **candidate** to review and approve the content of statements made by the **candidate's** campaign committee or other authorized agents and makes the **candidate** responsible for those statements.

[7] **Candidates** for election are sometimes the subject of false, misleading, or unfair allegations made by opposing **candidates**, third parties, or the media. As long as the **candidate for election** does not violate Rule 4.4 (d), he or she may make a factually accurate public response, although it is

preferable for someone else to respond if the allegations relate to a pending case. If an independent third party has made unwarranted attacks on a **candidate for election's** opponent, the **candidate for election** may disavow the attacks and request the third party to cease and desist.

[8] Rule 4.4 (d)(3) prohibits **candidates** for election, with regard to cases or issues likely to come before the court, from making a commitment, promise, or pledge that is inconsistent with the **impartial** performance of the adjudicative duties of the office. The making of a commitment, promise, or pledge is not dependent on, or limited to, the use of any specific words or phrases. The totality of the statement must be examined to determine if a reasonable person would believe that the **candidate** has specifically undertaken to reach a particular result. Commitments, promises, and pledges must be contrasted with statements or announcements of personal views on legal, political, or other issues, which are not prohibited. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views.

Source: This Rule is derived in part from Rule 4.1 of the 2007 ABA Code and in part from Canon 5 of the former Maryland Code of Judicial Conduct. The Comments are derived from the ABA Comments to Rule 4.1 of the 2007 ABA Code.

Rule 4.5. POLITICAL CONDUCT OF DISTRICT COURT CANDIDATE FOR RETENTION

A District Court candidate for retention:

(a) may contact and communicate with the Governor and members of the State Senate regarding the **candidate's** reconfirmation;

(b) may seek, accept, and use endorsements from any person or organization;

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

(d) subject to paragraph (c) of this Rule, may respond to a personal attack or an attack on the **candidate's** record;

(e) 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; and

(f) shall not **knowingly** or with reckless disregard for the truth misrepresent the **candidate's** identity or qualifications or any other fact.

COMMENT

[1] Because a **District Court candidate for retention** does not face an election, the political activity allowed is much more limited. It is reasonable to permit the judge to contact the Governor, who must transmit the judge's name to the Senate, and members of the Senate, regarding the judge's reconfirmation, and to seek endorsements that may be helpful to the judge in that

regard. The constraints in paragraphs (c) through (f), which are taken from Rule 4.4, are applicable as well to even this political activity.

Source: This Rule and the Comment are new.

Rule 4.6. APPLICABILITY AND DISCIPLINE

(a) A **candidate** who is a judge shall comply with the Rules in this Section 4. A **candidate** who is a lawyer shall comply with Rule 8.2 of the Maryland Lawyers' Rules of Professional Conduct (Maryland Rule 16-812).

(b) 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.

Source: This Rule is derived from Canon 5D of the former Maryland Code of Judicial Conduct.

**MARYLAND COMMITTEE TO REVIEW
THE 2007 ABA MODEL CODE OF JUDICIAL CONDUCT**

**SUMMARY OF RECOMMENDATIONS REGARDING
2007 ABA MODEL CODE OF JUDICIAL CONDUCT**

Preliminary Provisions

(a) The enforceable ethical standards proposed in the 2007 ABA Code are contained in Rules that are grouped into four categories:

(1) Rules governing judicial integrity and the avoidance of impropriety (Rules 1.1 through 1.3);

(2) Rules governing the performance of judicial duties (Rules 2.1 through 2.16);

(3) Rules governing extra-judicial activity (Rules 3.1 through 3.15); and

(4) Rules governing political activity (Rules 4.1 through 4.5).

(b) The 2007 ABA Code also contains several provisions that are not in the form of Rules but which are clearly part of this Code. They are grouped into four separate preliminary sections entitled "Preamble," "Scope," "Terminology," and "Application."

(c) The Committee has no difficulty with the provisions stated in the Preamble. Of the 14 States that have filed reports regarding the ABA Code, 13 have recommended adoption of the ABA Preamble, either as written or in similar language.

Notwithstanding that the same 13 States had recommended adoption

of the ABA Scope section, as written or in similar language, it appears to the Committee that the provisions stated in the "Scope" section seem to have little relevance to the scope of this Code and appear to be more in the nature of general provisions.

(d) The section captioned "Terminology" defines 23 terms that appear in the ABA Code, some in only one Rule. In the Committee's view, about half of those terms either do not require specific definition or are better defined in the one Rule in which they appear. In light of the Committee's recommendation for language or substantive changes in specific Rules, other terms defined in the "Terminology" section are irrelevant. No State has adopted the ABA Terminology section without some change. Most of the provisions in the "Application" section are substantively inapplicable in Maryland, and, in the Committee's view, there is no need for a separate section. No State has adopted the ABA Application section without some change.

(e) The Committee proposes a consolidated preliminary part containing General Provisions, Definitions, and a Preamble.

(f) The General Provisions (Paragraphs A-101 through A-109) describe the structure of this Code (Paragraph A-101) and the principal distinctions between it and the 2007 ABA Code (Paragraph A-102). They also contain provisions included in the "Scope" section of the 2007 ABA Code (Paragraphs A-103 through A-107), a provision dealing with the Judicial Ethics Committee taken from the Preamble to the current Maryland Code (Paragraph

A-108), and an application provision (Paragraph A-109).

(g) The following terms in the Definitions are defined in the same way as in the "Terminology" section of the 2007 ABA Code: "domestic partner," "fiduciary," "impartial," "impending matter," "independence," "knowingly," "member of [judge's] [candidate's] family," and "pending matter." The terms "gift" and "member of [judge's] [candidate's] household" conform to definitions in the State Public Ethics Law (Code, State Government Article, Title 15), and the definition of "significant financial interest" is copied from the current Maryland Code of Judicial Conduct. Excluded from the Definitions are the following terms defined in the Terminology section of the 2007 ABA Code: "aggregate," "appropriate authority," "contribution," "de minimis," "economic interest," "honorarium," "impropriety," "integrity," "judicial candidate," "law," "nonpublic information," "personally solicit," "political organization," "public election," and "third degree of relationship."

(h) The Preamble is copied from the 2007 ABA Code.

(i) As used hereafter in this Summary, "ABA Rule" means the Rule as proposed in the 2007 ABA Model Code, and "ABA Comment" means the Comment as proposed in that Code. In some instances, the Committee has made what it regards as style or clarifying changes to the ABA language.

(j) The Committee has relied on data from the ABA to keep track of what other States have done. As to each Rule, the ABA reports which States have adopted or recommended the Rule in

"identical language" or in "similar language." The Committee has relied on the ABA's perception of "similar language" and not attempted to examine the actual language adopted or recommended by each State. The data reported by the Committee is derived from the on-line information from the ABA as of May 31, 2009.

Section 1. Rules Governing Judicial Integrity and the Avoidance of Impropriety

Heading

This section of the ABA Code is headed by Canon 1, which states "A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety." As noted, the Committee recommends avoiding such a general positive statement in the form of a Canon, which the ABA Code agrees is not, itself, an enforceable command, in favor of a descriptive heading for the Rules that *do* contain enforceable commands. Everything stated in Canon 1 is stated with equal clarity in Rules 1.1, 1.2, and 1.3.

Rule 1.1. COMPLIANCE WITH THE LAW

The Committee recommends adoption of ABA Rule 1.1. Fourteen States have adopted or recommended ABA Rule 1.1, as written or in similar language.

Rule 1.2. PROMOTING CONFIDENCE IN THE JUDICIARY

The Committee recommends adoption of ABA Rule 1.2 and ABA Comments [1], [2], [3], [4], [6], and the first sentence of Comment [5]. The Committee has added the second sentence to ABA Comment [5]. Thirteen States have adopted or recommended ABA Rule 1.2 as written or in similar language.

Rule 1.3. AVOIDING ABUSE OF THE PRESTIGE OF JUDICIAL OFFICE

The Committee recommends adoption of ABA Rule 1.3 and the ABA Comments. The Committee has added a cross-reference under Comment [3]. Three States have adopted ABA Rule 1.3 as written; ten others have adopted or recommended it in similar language.

Section 2. Rules Governing the Performance of Judicial Duties

Heading

This Section of the ABA Code is headed by Canon 2, which states "A judge shall perform the duties of judicial office impartially, competently, and diligently." For the reasons already noted, the Committee recommends deletion of that Canon in favor of the above heading.

Rule 2.1. GIVING PRECEDENCE TO THE DUTIES OF JUDICIAL OFFICE

The Committee recommends adoption of ABA Rule 2.1, except for the words "all of" in that Rule. The Committee recommends adoption of ABA Comments [1] and [2] and the addition of a new

Comment. Rule 2.1, as articulated in the ABA Code, if read literally and in the absence of an explanatory Comment, could preclude a judge from temporarily forsaking judicial duties to take care of family obligations or other permissible extrajudicial activities. The Committee does not believe that is intended, or appropriate. Fourteen States have adopted or recommended ABA Rule 2.1 as written or in similar language.

Rule 2.2. IMPARTIALITY AND FAIRNESS

The Committee recommends adoption of ABA Rule 2.2 and the ABA Comments to that Rule. The Committee has added a cross-reference to Comment [2] to Rule 2.6, which is intended to link the two Rules with respect to dealing with *pro se* litigants. Thirteen States have adopted or recommended ABA Rule 2.2 as written or in similar language.

Rule 2.3. BIAS, PREJUDICE, AND HARASSMENT

With certain style changes, the Committee recommends adoption of ABA Rule 2.3 and, with certain style changes, the ABA Comments to that Rule. Thirteen States have adopted or recommended ABA Rule 2.3 as written or in similar language.

Rule 2.4. EXTERNAL INFLUENCES ON JUDICIAL CONDUCT

The Committee recommends adoption of ABA Rule 2.4 and the ABA Comments to that Rule. Fourteen States have adopted or

recommended ABA Rule 2.4 as written or in similar language.

Rule 2.5. COMPETENCE, DILIGENCE, AND COOPERATION

The Committee recommends adoption of ABA Rule 1.5 and the ABA Comments to that Rule. The Committee recommends the addition of a new paragraph (c) to the Rule. Although it may be presumed to be part of a judge's duties under paragraphs (a) and (b), the Committee believes the point made in paragraph (c) is worthy of special mention. Thirteen States have adopted or recommended ABA Rule 2.5 as written or in similar language.

Rule 2.6. ENSURING THE RIGHT TO BE HEARD

The Committee recommends adoption of ABA Rule 2.6 and, with some modifications, the ABA Comments to that Rule. The Committee recommends a new Comment [2], which attempts to address a problem judges face when dealing with unrepresented litigants - how much assistance they may properly give without prejudicing other parties or creating an appearance of partiality.

This is an issue that is currently under consideration by a number of groups, and varying views have been expressed, including a listing of specific things that a judge may (or should) do. It has been suggested, for example, that, to ensure that an unrepresented litigant has an effective opportunity to be heard, a judge may (or should) take a more active role in questioning witnesses, including the unrepresented party, modify

the order of taking evidence, explain legal requirements to the unrepresented party, including the requirements for offering or objecting to evidence, and advise unrepresented litigants of agencies that may be able to provide assistance. The Committee believes that it is unnecessary and inappropriate to include a specific litany of possibilities in the Code of Judicial Conduct, and that the proposed Comment [2] will suffice to alert the judge that reasonable and non-prejudicial accommodations are permissible, though not required. Fourteen States have adopted or recommended ABA Rule 2.6 as written or in similar language.

Rule 2.7. RESPONSIBILITY TO DECIDE

With one important modification, the Committee recommends adoption of ABA Rule 2.7 and the ABA Comment to that Rule. The ABA Rule requires a judge to hear and decide matters assigned to the judge "except when disqualification is required by Rule 2.11 or other law." The Committee believes that exception is too narrow. There may be instances in which recusal may not be "required" by Rule 2.11 or other law, but the judge feels legitimately uncomfortable presiding in the case, whether the parties consent or not, and the Committee believes that a judge should be free to recuse in that circumstance without running afoul of Rule 2.7. The test should be whether "recusal is appropriate." The Committee does not believe that more flexible test will be treated as a license for judges to shirk their

responsibilities. Fourteen other States have adopted or recommended ABA Rule 2.7 as written or in similar language.

Rule 2.8. DECORUM, Demeanor, AND COMMUNICATION WITH JURORS

The Committee recommends adoption of ABA Rule 2.8 and the ABA Comments to that Rule. Thirteen other States have adopted or recommended ABA Rule 2.8 as written or in similar language.

Rule 2.9. EX PARTE COMMUNICATIONS

With certain modifications, the Committee recommends adoption of ABA Rule 2.9 and ABA Comments [1], [2], [3], [5], [6], and [7] to that Rule. The Committee recommends retaining Canon 3B (6)(e) of the Maryland Code of Judicial Ethics in lieu of ABA Rule 2.9 (A)(2). The Committee also recommends a different Comment [4], which deals with ex parte communications in the context of a judge sitting in a problem-solving program.

There now exist in Maryland a significant number of "drug court" programs, some housed in the District Court, some attached to the criminal jurisdiction of the Circuit Court, and some emanating from the juvenile causes jurisdiction of the Circuit Court. Those programs, as currently structured, have several things in common: (1) the defendant/juvenile, may not be placed in the program unless, after an explanation of the program protocols and requirements and the advice of counsel, he or she consents to the placement; (2) the judge acts as part of a

treatment team that closely monitors the defendant/juvenile's behavior and progress, and, in that context, may be privy to ex parte communications from other members of the treatment team; and (3) the judge may impose various sanctions for non-compliance with program requirements, including expulsion from the program, which could lead to the revocation of probation and incarceration or detention of the defendant/juvenile.

ABA Comment [4] to Rule 2.9 states:

"A judge may initiate, permit, or consider ex parte communications expressly authorized by law, such as when serving on therapeutic or problem-solving courts, mental health courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others."

The ABA Reporter's Note to that Comment observes that the communications which judges have with other members of a treatment team "can be in tension with traditional rules governing ex parte communications." Because such programs vary throughout the country, the ABA felt unable to "devise rules of general applicability," but instead proposed the Comment "which calls special attention to the exception for ex parte communications authorized by law and notes *that this exception enables individual jurisdictions to devise special rules for their therapeutic courts.*" (Emphasis added).

Upon the filing of *Brown v. State*, ___ Md. ___ (S.T. 2008, No. 118, filed May 18, 2009), the Court's Standing Committee on Rules of Practice and Procedure commenced the process for

developing standards for these problem-solving judicial programs, which are beginning to extend beyond drug programs, and it may be that the Court will ultimately adopt other Rules that will govern the appropriate role of judges in such programs. Reluctant to leave a hole in its Report in this important respect, however, the Committee recommends, at least tentatively, its proposed Comment [4].

The Committee calls the Court's attention to Comment [6], which is a new provision in the ABA Code. Only one State has recommended adoption of ABA Rule 2.9 as written; eleven States have adopted or recommended it in similar language.

Rule 2.10. JUDICIAL STATEMENTS ON PENDING AND IMPENDING CASES

The Committee recommends, in lieu of ABA Rule 2.10, retaining the language from Canon 3B (8) and (9) of the Maryland Code of Judicial Conduct, which is substantively comparable to ABA Rule 2.10. The Committee recommends adoption of ABA Comments [1] and [2] but not Comment [3]. It recommends a new Comment [3]. Thirteen other States have adopted or recommended ABA Rule 2.10 as written or in similar language.

Rule 2.11. DISQUALIFICATION

The Committee recommends a modification to ABA Rule 2.11, to incorporate language from Canon 3D of the Maryland Code of Judicial Conduct, and to delete paragraph (a)(4) of the ABA Rule,

which would require recusal if the judge knows that a party or a party's lawyer contributed more than a fill-in-the-blank number of dollars to the judge's election campaign. With some modifications, the Committee recommends adoption of ABA Comments [1], [2], and [3], but not Comment [6]. The Committee new has added Comments [4] and [5].

No State has adopted or recommended ABA Rule 2.11 as written. Fourteen other States have adopted or recommended it in similar language.

Rule 2.12. SUPERVISORY DUTIES

The Committee recommends adoption of ABA Rule 2.12 and the ABA Comments to that Rule. Thirteen other States have adopted or recommended ABA Rule 2.12 as written or in similar language.

Rule 2.13. ADMINISTRATIVE APPOINTMENTS

The Committee recommends adoption of paragraphs (a) and (c) of ABA Rule 2.13 and ABA Comments [1] and [2] to that Rule. The Committee does not recommend adoption of ABA Rule 2.13 (b), which limits the ability of a judge to appoint a lawyer who has contributed more than a certain amount to a judge's election campaign to a compensated position, and ABA Comment [3], which deals with that subject. No State has adopted or recommended ABA Rule 2.13 as written. Thirteen other States have adopted or recommended it in similar language.

Rule 2.14. DISABILITY AND IMPAIRMENT OF OTHERS

The Committee recommends adoption of ABA Rule 2.14 and the ABA Comments to that Rule. Thirteen other States have adopted or recommended ABA Rule 2.14 as written or in similar language.

Rule 2.15. RESPONDING TO JUDICIAL AND LAWYER MISCONDUCT

In lieu of ABA Rule 2.15, the Committee recommends retaining the language from Canon 3F of the Maryland Code of Judicial Conduct. Twelve other States have adopted or recommended ABA Rule 2.15 as written or in similar language.

Rule 2.16. COOPERATION WITH DISCIPLINARY AUTHORITIES

The Committee recommends adoption of ABA Rule 2.16 and the ABA Comment to that Rule. Thirteen other States have adopted or recommended ABA Rule 2.16 as written or in similar language.

Section 3. Rules Governing Extrajudicial Activity

Heading

This section of the ABA Code is headed by Canon 3, which states "A judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office." For the reasons already noted, the Committee recommends deletion of that Canon in favor of the above heading.

Rule 3.1. EXTRAJUDICIAL ACTIVITIES IN GENERAL

The Committee recommends adoption of ABA Rule 3.1, except paragraph (E) of that Rule. ABA Rule 3.1 (E) provides that, when engaging in extrajudicial activities, a judge shall not "make use of court premises, staff, stationery, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law."

The Committee believes that provision is unnecessarily stringent. Obviously, judges should not ordinarily commandeer or use public employees or resources for private purposes, but the Committee does not believe that asking a secretary to make a pot of coffee for the judge or using a court-supplied memo pad to prepare a shopping list or to jot a reminder to make a personal call should constitute an ethical violation. The Committee recommends that the Rule state more generally that a judge shall not "make inappropriate use of court premises, staff, stationery, equipment, or other resources," and has substituted that language as paragraph (e). The Committee recommends adoption of the ABA Comments to the Rule. Three States have adopted or recommended ABA Rule 3.1 as written; ten others have adopted or recommended it in similar language.

Rule 3.2. APPEARANCE BEFORE GOVERNMENTAL BODIES AND CONSULTATION WITH GOVERNMENT OFFICIALS

The Committee recommends adoption of ABA Rule 3.2 and the ABA Comments to that Rule. Thirteen other States have adopted or recommended ABA Rule 3.2 as written or in similar language.

Rule 3.3. TESTIFYING AS A CHARACTER WITNESS

The Committee recommends adoption of ABA Rule 3.3 and the ABA Comment to that Rule. Thirteen other States have adopted or recommended ABA Rule 3.3 as written or in similar language.

Rule 3.4. APPOINTMENT TO GOVERNMENTAL POSITIONS

The Committee recommends adoption of ABA Rule 3.4 and the ABA Comments to that Rule. The Committee recommends a new Comment [2] and a Committee Note, which are derived from the Comment and Committee note to Canon 4C of the Maryland Code of Judicial Conduct. Thirteen other States have adopted or recommended ABA Rule 3.4 as written or in similar language.

Rule 3.5. USE OF NONPUBLIC INFORMATION

The Committee recommends adoption of ABA Rule 3.5 and, with one modification, the ABA Comments to that Rule. It has added a new second sentence to the Rule, which merely moves the definition of "nonpublic information" from the Terminology section to this Rule - the only Rule using that term. The

Committee proposes a modification to Comment [2] to eliminate the words "if consistent with other provisions of the Code." The Committee believes that, if it is "necessary" for a judge to act on nonpublic information in order to protect the health or safety of the judge, a member of the judge's family, court personnel, or other judicial officers, the judge should not need to stop to consider whether the act is consistent with every other provision of this Code. Fourteen other States have adopted or recommended ABA Rule 3.5 as written or in similar language.

Rule 3.6. AFFILIATION WITH DISCRIMINATORY ORGANIZATIONS

The Committee recommends adoption of ABA Rule 3.6 and the ABA Comments to that Rule. This Rule makes a number of substantive changes in both the 1990 ABA Code and the Maryland Code of Judicial Conduct. The Court's attention is drawn to the ABA Reporter's Note to Rule 3.6. Fourteen other States have adopted or recommended ABA Rule 3.6 as written or in similar language.

Rule 3.7. PARTICIPATION IN EDUCATIONAL, RELIGIOUS, CHARITABLE, FRATERNAL, OR CIVIL ORGANIZATIONS AND ACTIVITIES

The Committee recommends adoption of ABA Rule 3.7 and the ABA Comment to that Rule. Three States have adopted or recommended ABA Rule 3.7 as written; ten others have adopted or recommended it in similar language.

Rule 3.8. APPOINTMENTS TO FIDUCIARY POSITIONS

The Committee recommends adoption of ABA Rule 3.8 and the ABA Comment to that Rule. Thirteen other States have adopted or recommended ABA Rule 3.8 as written or in similar language.

Rule 3.9. SERVICE AS ARBITRATOR OR MEDIATOR

The Committee recommends adoption of ABA Rule 3.9 and the ABA Comment to that Rule. The Committee recommends a new paragraph (b) and a Committee note, however, which retain the language of Canon 4F (2) of the Maryland Code of Judicial Conduct and the Committee note thereto dealing with retired judges subject to recall who provide ADR services. Twelve other States have adopted or recommended ABA Rule 3.9 as written or in similar language.

Rule 3.10. PRACTICE OF LAW

In lieu of ABA Rule 3.10, the Committee recommends retaining Canon 4G of the Maryland Code of Judicial Conduct. Proposed paragraphs (a) and (b)(1) are consistent with ABA Rule 3.10. Paragraph (b)(2) and the cross reference deal with part-time judges of the orphans' courts, not addressed in the ABA Rule. The Committee recommends adoption of ABA Comment [1] and the addition of Comments [2] and [3], which are derived from the Comments to Canon 4G of the Maryland Code of Judicial Conduct.

Thirteen other States have adopted or recommended ABA Rule 3.10 as written or in similar language.

Rule 3.11. FINANCIAL, BUSINESS, OR REMUNERATIVE ACTIVITIES

The Committee recommends adoption of ABA Rule 3.11 and the ABA Comments to that Rule. The Committee recommends adding a new paragraph (d) to the Rule, which exempts retired judges subject to recall from the Rule and is derived from Canon 6C of the Maryland Code of Judicial Conduct. Twelve other States have adopted or recommended ABA Rule 3.11 as written or in similar language.

Rule 3.12. COMPENSATION FOR EXTRAJUDICIAL ACTIVITIES

The Committee recommends adoption of ABA Rule 3.12 and the ABA Comments to that Rule. The Committee recommends a cross-reference to Rule 3.9, with respect to retired judges approved for recall who provide alternative dispute resolution services. Thirteen other States have adopted or recommended ABA Rule 3.12 as written or in similar language.

Rule 3.13. ACCEPTANCE OF GIFTS, LOANS, BEQUESTS, BENEFITS, OR OTHER THINGS OF VALUE

With one modification, the Committee recommends adoption of ABA Rule 3.13 and the ABA Comments to that Rule. The Committee does not recommend adoption of the provisions dealing with the

reporting of **gifts**, which is dealt with in Rule 3.15 and governed by Maryland Rule 16-815. Only two States have adopted or recommended ABA Rule 3.13 as written; eleven other States have adopted or recommended it in similar language.

Rule 3.14. REIMBURSEMENT OF EXPENSES AND WAIVERS OF FEES OR CHARGES

The Committee recommends adoption of ABA Rule 3.14 and the ABA Comments to that Rule. Thirteen other States have adopted or recommended ABA Rule 3.14 as written or in similar language.

Rule 3.15. REPORTING REQUIREMENTS

In lieu of ABA Rule 3.15, the Committee recommends a requirement that judges comply with the requirements of Maryland Rule 16-815. Twelve other States have adopted or recommended ABA Rule 3.15 as written or in similar language.

Section 4. Rules Governing Political Activity

Heading

This section of the ABA Code is headed by Canon 4, which states "A judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary." For the reasons already noted, the Committee recommends deletion of

that Canon in favor of the above heading.

General

Section 4 of the ABA Code contains five Rules, to each of which is appended one or more Comments:

- Rule 4.1. Political and Campaign Activities of Judges and Judicial Candidates in General
- Rule 4.2. Political and Campaign Activities of Judicial Candidates in Public Elections
- Rule 4.3 Activities of Candidates for Appointive Judicial Office
- Rule 4.4 Campaign Committees
- Rule 4.5 Activities of Judges Who Become Candidates for Nonjudicial Office

Although the Committee believes that most of the basic requirements and precepts stated in these Rules and Comments should be adopted in substance, and, indeed, many are substantively the same as comparable provisions in the Maryland Code of Judicial Conduct, some are inappropriate in light of Maryland statutory law, and the Committee believes that the others can be better and more effectively stated in the particular contexts in which judges of the various courts in Maryland are selected and retained. This is the one area in which the Committee recommends wholesale changes to the ABA Code, mostly in terms of organization. No other State has adopted or recommended ABA Rules 4.1 or 4.4 without some change, and only one State has adopted ABA Rule 4.3 without some change. Twelve States had adopted or recommended ABA Rule 4.2 as written or in similar language.

The selection, tenure, and retention of judges is dealt with in Md. Constitution Article IV, §5A (appellate judges), §§3 and 5 (Circuit Court judges), §41D (District Court judges), and §40 (Orphans' Court judges). In all cases, a vacancy is filled by appointment by the Governor. The appointment of appellate, District Court, and Orphans' Court judges requires confirmation by the State Senate; the appointment of Circuit Court judges does not.

Appellate judges then face an uncontested plebiscite election (yes or no for continuance in office) for an additional 10-year term, at the end of which they face another such election for a further 10-year term. Circuit Court judges face a potentially contested primary and general election for a 15-year term, at the end of which, in order to remain in office, they must be appointed by the Governor for a "bridge" term until the next potentially contested primary and general election. District Court judges do not face election but receive a 10-year term, at the end of which they must be reappointed by the Governor, subject to the Senate's consent. Orphans' Court judges face a potentially contested primary and general election every four years.

The first context, applicable to all appellate and District Court judges, all Circuit Court judges (either through initial appointment or a "bridge" appointment at the end of their 15-year term), and many Orphans' Court judges, relates to appointment by the Governor to fill a vacancy. Except for Orphans' Court

judges, that requires an application to and consideration by a judicial nominating commission, which normally interviews the applicants, receives information and recommendations from Bar Associations, other interested groups, and members of the public, and sends to the Governor a list of recommended applicants. Until recently, the Governor, by Executive Order, has agreed to appoint only from that list. Although the current Executive Order does not express that agreement, the Governor, so far, has made judicial appointments from the list submitted by the appropriate judicial nominating commission.

The second context, applicable to all appellate, Circuit Court, and Orphans' Court judges, is their status as candidates in an election. Appellate judges, as noted, are on the ballot in a general election for a "yes" or "no" vote for retention. Although they do not face opposition from other candidates, they may face political opposition to their retention, and they are regarded as candidates under the State election laws. Circuit Court and orphans' Court judges face contested primary and general elections.

The third category, applicable to District Court judges, is the need to be reconfirmed by the State Senate at the end of their 10-year term.

The Committee believes that the Rules governing political activity should focus on these different contexts and has structured its proposals to do so. Rule 4.1 is a definition Rule that defines the various contexts - "applicant" for appointment

by the Governor, "candidate for election," "District Court candidate for retention," "candidate" generally, and "political organization. Rule 4.2 sets the constraints on judges who are not candidates. They may not engage in any partisan political activity. Rule 4.3 sets forth the political activity allowed to an "applicant" for appointment by the Governor. Rule 4.4 sets forth the political activity allowed (and not allowed) to a candidate for election. For the most part, this follows the substance of ABA Rule 4.1. Rule 4.5 sets forth the political activity allowed to a District Court candidate for retention. This is an area not covered by the current Maryland Code of Judicial Conduct or clearly specified in the ABA Rules. Finally, Rule 4.6 provides for the applicability of the Section 4 Rules to judges and lawyers who apply and run for judicial office.