

STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

NOTICE OF PROPOSED RULES CHANGES

The Rules Committee has submitted its One Hundred Sixty-Third Report to the Court of Appeals, transmitting thereby a proposed new Code of Conduct for Judicial Appointees (Rule 16-814) and proposed new Rules 2-513, 3-513, 6-153, and 16-206 and proposed amendments to Rules 2-516, 2-611, 3-611, 4-216, 4-262, 4-263, 4-331, 4-342, 4-345, 4-347, 4-348, 4-501, 6-402, 6-403, 6-405, 6-416, 13-702, 16-816, 16-824, and 16-1006. Also transmitted are the Style Subcommittee's restyling of the Ideals of Professionalism that have been promulgated by the Professionalism Commission.

The Committee's One Hundred Sixty-Third Report and the proposed new rules and amendments are set forth below.

Interested persons are asked to consider the Committee's Report and proposed rules changes and forward on or before March 1, 2010 any written comments they may wish to make to:

Sandra F. Haines, Esq.  
Reporter, Rules Committee  
2011-D Commerce Park Drive  
Annapolis, Maryland 21401

BESSIE M. DECKER

Clerk

Court of Appeals of Maryland

January 13, 2010

The Honorable Robert M. Bell,  
Chief Judge  
The Honorable Glenn T. Harrell, Jr.  
The Honorable Lynne A. Battaglia  
The Honorable Clayton Greene, Jr.  
The Honorable Joseph F. Murphy, Jr.  
The Honorable Sally D. Adkins  
The Honorable Mary Ellen Barbera,  
Judges  
The Court of Appeals of Maryland  
Robert C. Murphy Courts of Appeal Building  
Annapolis, Maryland 21401

Your Honors:

The Rules Committee submits this, its One Hundred Sixty-Third Report, and recommends that the Court adopt the new Rules and amendments to existing Rules transmitted with this Report. The Report is a comprehensive one, comprising eight categories of proposed changes.

**Category One** consists of a proposed new Code of Conduct for Judicial Appointees. On October 5, 2009, the Court considered and, subject to certain reservations, gave tentative approval to a new Code of Judicial Conduct and directed the Rules Committee to prepare and submit to the Court a parallel Code for judicial appointees. The proposed Code submitted with this Report follows the general format and uses the language of the pending Code of Judicial Conduct, to the extent relevant.

Transmitted with this Report, but not submitted as part of it, is the Code of Judicial Conduct, as tentatively approved by the Court, with one proposed addition to Comment [1] to Rule 4.3 and several relatively minor style changes. Those amendments are proposed for inclusion in the Code of Conduct for Judicial Appointees as well, so that the two Codes will be consistent.

The Committee suggests the Court consider them first in the context of the Code of Judicial Conduct.

There is one matter of substance involving the Code for Judicial Appointees to which special mention is appropriate, that dealing with the scope or application of the Code. The current Code defines "judicial appointee" as a District Court Commissioner and an auditor, examiner, master, or referee appointed by a court. The Code thus applies to all persons in any of those positions but to no one else. In preparing the new Code, the Committee considered three questions on which it could find little guidance:

FIRST, in response to a questionnaire, the Committee was apprised by the county administrative judges that the courts are not currently appointing referees and thus opted to propose deletion of that category. It appears that the duties once assigned to referees can be performed by masters or auditors or, in situations under Code, Corporations and Associations Article, §3-210, appraisers appointed by the court. If the Court accepts that recommendation, it should consider deleting the reference to referees in Rule 16-816 (Financial Disclosure Statements) as well.

SECOND: Rules 2-541, 2-542, and 2-543 provide for two classes of master, examiner, and auditor - standing and special. A special master, examiner, or auditor is appointed for a "particular action," and the issue is whether, or to what extent, those appointees should be subject to the provisions applicable to their "standing" counterparts.

THIRD: there are a number of persons, other than masters, examiners, and auditors, who are appointed by judges or courts to do judicially related work, *e.g.*, trust clerks, commissioners appointed in partition cases to value and divide the property, trustees, receivers, ADR practitioners, guardians of various kinds, and persons appointed to serve on property review boards under Code, Transportation Article §8-327. As with the special masters, examiners, and auditors, the question is whether, or to what extent, any of those persons should be subject to provisions applicable to the other categories of judicial appointees.

The current Code applies generally to *all* masters, examiners, and auditors but exempts those appointees serving only part-time from *some* of the restrictions applicable to full-time appointees. Subject to certain limitations and conditions, they may practice law and engage in business pursuits forbidden to the full-time appointees. Understanding that the issue is one of judicial policy for the Court to resolve, the Committee respectfully recommends the following approach, which is provided

for in the "APPLICATION" provision of the proposed Code:

(1) District Court Commissioners and full-time standing masters, examiners, and auditors would be subject to the entire Code.

(2) Part-time standing masters, examiners, and auditors would be subject to the entire Code except as otherwise provided in specific Rules relating to certain extra-official activities.

(3) Special masters, examiners, and auditors, during the periods they serve as such, would be subject only to the Rules in Sections 1 and 2, to Rule 3.5, and to such of the Comments to those Rules as are relevant, given the limited duration of their service. The Rules that would be applicable are those relating to the conduct of the judicial appointees in their official work - fairness, impartiality, integrity, diligence, *ex parte* communications, etc. On request of a party or the appointing authority, however, those appointees would be required to disclose any interests or activities covered by the other Rules that might be ground for recusal.

(4) The Code should not be applicable to any of the other categories of persons appointed by courts or judges. The Committee's view is that (i) trust clerks perform advisory clerical functions and do not make decisions having any legal effect; (ii) partition case commissioners take a specific oath that they will faithfully perform their duties and can be easily monitored; (iii) court-appointed ADR practitioners generally do not perform judicial or quasi-judicial functions; and (iv) receivers, trustees, and guardians also do not generally exercise judicial or quasi-judicial functions and, in any event, are subject to the duties and limitations emanating from their status as fiduciaries.

(5) The issue regarding property review boards is more problematic. The members of those boards perform duties akin to masters, but it is not clear whether those boards, although under the jurisdiction of the court, are really Executive Branch agencies, and there is the lurking issue of whether judicial appointments to such boards (especially of farmers and engineers) are permitted by Article 8 of the Maryland Declaration of Rights. The Committee notes that under Code, Transportation Article, §8-329, appeals from the board's decision are heard *de novo* and are treated as original actions for condemnation. Once an "appeal" is filed, the board's decision ceases to have any effect. See *Volz v. State Roads Commission*, 221 Md. 209 (1959).

**Category Two** consists of proposed new Rule 16-206, dealing with problem-solving programs, currently operating in the Circuit and District courts. The proposed Rule was developed with the

active collaboration of Gray Barton, Executive Director of the Office of Problem-Solving Courts; Judges Kathleen Gallogly Cox, Jamey Hueston, and Neil Axel; representatives from the Office of the Public Defender; and other consultants. It establishes certain basic standards for those programs but permits the operating details to be specified in a plan proposed by the county administrative judge of a Circuit Court or the Chief Judge of the District Court. The Rule requires the plans to be consistent with general protocols and requirements set forth in an Administrative Order of the Chief Judge of the Court of Appeals and it requires approval by the Court before a plan may be implemented. The Rule would provide a specific legal basis for these programs and thus mesh with proposed Rule 2.9 of the Code of Judicial Conduct.

**Category Three** consists of the Style Subcommittee's restyling of the Ideals of Professionalism, as requested by the Court. It is recommended that the Ideals be placed immediately after the Maryland Lawyers' Rules of Professional Conduct.

**Category Four** consists of amendments to Rules 2-611 and 3-611. These revisions implement recommendations made by the Chief Judge of the District Court and the Attorney General's Office to provide greater protection against unlawfully obtained confessed judgments. The major structural change is that clerks no longer would be able to enter confessed judgments routinely without judicial direction.

**Category Five** consists of proposed new Rules 2-513 and 3-513, permitting, under certain conditions, testimony in civil cases to be provided remotely by telephone. These Rules were recommended by the Judicial Administration Section Council of the Maryland State Bar Association. The Committee currently is looking more broadly at authorizing certain judicial proceedings to be conducted by electronic means but is persuaded that Rules on telephonically transmitted testimony can stand alone for the present.

**Category Six** consists of amendments to Rules 4-262 and 4-263, dealing with discovery in criminal cases. A new definition of "provide" is designed to provide greater clarity in how discovery is to be implemented. A proposed amendment to Rule 4-262 would require that requests for discovery in District Court cases - for non-*Brady* material - be in writing.

**Category Seven** consists of two sets of amendments to Rule 4-331 (Motions for New Trial). One set is designed to make that Rule more compatible with Rules 4-701 through 4-711 (the new post conviction DNA testing Rules) and avoid parallel proceedings, by allowing the court to require a person filing a motion for new

trial under Rule 4-331 based on DNA evidence subject to Code, Criminal Procedure Article, §8-202 to exhaust the remedies provided by Rules 4-701 through 4-711. The second set permits the court to dispense with a hearing on a motion filed under section (c)(1) of the Rule, which requires that the motion be filed within one year of certain events, if the motion was not timely filed. The Committee is planning to look more broadly at Rule 4-331, but recommends the adoption of these proposals now.

**Category Eight** consists of new Rule 6-153 and amendments to Rules 2-516, 4-216, 4-342, 4-345, 4-347, 4-348, 4-501, 6-402, 6-403, 6-405, 6-416, 13-702, 16-824, and 16-1006 designed primarily either to provide greater clarity to those Rules or to conform them to recent legislation.

For the further guidance of the Court and the public, following each proposed rules change is a Reporter's Note describing in further detail the reasons for the proposal and any changes that would be effected in current law or practice. *We caution that the Reporter's Notes are not part of the Rules, have not been debated or approved by the Committee, and are not to be regarded as any kind of official comment or interpretation.* They are included solely to assist the Court in understanding some of the reasons for the proposed changes.

Respectfully submitted,

Alan M. Wilner  
Chair

Linda M. Schuett  
Vice Chair

AMW/LMS:cdc

**MARYLAND CODE OF CONDUCT FOR JUDICIAL APPOINTEES  
2010**

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## PREAMBLE

This Code of Conduct for Judicial Appointees governs the conduct of **judicial appointees**. It is patterned after the Maryland Code of Judicial Conduct (MCJC) set forth in Rule 16-813, and the provisions of this Code should be read in a consistent manner with parallel provisions in the MCJC.

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

## DEFINITIONS

### (a) **Judicial Appointee**

"**Judicial appointee**" means:

(1) an auditor, examiner, or master appointed by a court of this State; and

Cross reference: See Rules 2-541, 2-542, and 2-543.

(2) a District Court commissioner appointed pursuant to Article IV, §41G of the Maryland Constitution.

**Source:** With style changes this definition is derived from the former Code of Conduct for Judicial Appointees.

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

### (b) **Member of Judicial Appointee's Family**

"**Member of judicial appointee's family**" means a spouse, **domestic partner**, child, grandchild, parent, grandparent, or

other relative or person with whom the **judicial appointee** maintains a close familial relationship.

**Source:** This definition is derived from Section B-108 of the MCJC.

(c) **Member of Judicial Appointee's Household**

**"Member of judicial appointee's household"** means:

(1) if sharing the **judicial appointee's** legal residence, the **judicial appointee's** spouse, **domestic partner**, child, ward, financially dependent parent, or other financially dependent relative; or

(2) the **judicial appointee's** spouse, **domestic partner**, child, ward, parent, or other relative over whose financial affairs the **judicial appointee** has legal or actual control.

**Source:** This definition is derived from Section B-109 of the MCJC.

(d) Other Definitions

As to a **judicial appointee**, "**domestic partner**," "**fiduciary**," "**gift**," "**impartial, impartiality, and impartially**," "**impending matter**," "**independence**," "**knowingly, knowledge, known, and knows**," "**pending matter**," "**significant financial interest**," and "**third degree of relationship**" have the meanings set forth, respectively, in Sections B-101, B-102, B-103, B-104, B-105, B-106, B-107, B-110, and B-111, and B-112 of the MCJC.

## APPLICATION

(a) District Court Commissioners and Full-time Standing Masters, Examiners, and Auditors

This Code applies in its entirety to District Court Commissioners and full-time standing masters, examiners, and auditors.

(b) Part-time Standing Masters, Examiners, and Auditors

Except as otherwise provided in a specific Rule, this Code applies in its entirety to part-time standing masters, examiners, and auditors.

(c) Special Masters, Examiners, and Auditors

During the period of their serving in that capacity, special masters, examiners, and auditors are subject only to the Rules in Sections 1 and 2, to Rule 3.5, and to such of the Comments to those Rules as are relevant, given the limited duration of the service. Special masters, examiners, and auditors shall, however, on request of a party or the appointing authority, disclose any extra-official activity or interests covered by the other Rules in this Code that may be grounds for a motion to recuse under Rule 2.11.

**Source:** This provision is new.

**Committee note:** District Court Commissioners, despite the number of hours they may actually be on duty, are regarded as full-time judicial appointees. Auditors, examiners, and masters may fall into several categories.

Under Code, Courts Article, §2-102, all courts may appoint a master, examiner, or auditor in "a specific proceeding." Under Code, Courts Article, §2-501, the judges of the circuit

courts have more general authority to employ masters, examiners, and auditors. That authority is extended and made more specific in Rules 2-541 (masters), 2-542 (examiners), and 2-543 (auditors).

Rules 2-541, 2-542, and 2-543 create two categories of masters, examiners, and auditors - standing and special. Standing masters, examiners, and auditors are employed to deal with whatever cases are referred to them on an on-going basis, but their employment by the court may be full-time or part-time. Special masters, examiners, and auditors are appointed "for a particular action," and thus, like appointments made under Courts Article, § 2-102, their service is limited to the particular action or proceeding. During that period of service, however, it is possible that they may work full-time or part-time, as necessary or as directed by the court. A master, examiner, or auditor may therefore be standing full-time, standing part-time, special full-time, or special part-time.

This Code, in its entirety, applies to District Court Commissioners and full-time standing masters, examiners, and auditors. Because their employment by the court is full-time and more-or-less permanent, it is appropriate to limit some of their extra-official activities in the same manner as judges. Standing masters, examiners, and auditors who work only part-time but whose employment is also more-or-less permanent and who handle whatever cases are referred to them also need to be subject to most of the requirements and limitations in the Code, but it is impractical to preclude them from engaging in other lawful remunerative activities, such as practicing law or accounting or providing ADR services. They are subject to the entire Code, except as provided in specific Rules. Special masters, examiners, and auditors, appointed for only one proceeding, are subject to those Rules governing such things as fairness, impartiality, integrity, and diligence during the period of their service, but it is impractical and unnecessary to subject them across-the-board to the Rules in Section 4 or most of the Rules in Section 3 (political and extra-official activities), provided that, upon request of a party or the appointing authority, they disclose any activity or interest that may be cause for recusal.

## SECTION 1.

### RULES GOVERNING INTEGRITY AND THE AVOIDANCE OF IMPROPRIETY

#### Rule 1.1. COMPLIANCE WITH THE LAW

A **judicial appointee** shall comply with the law, including the Rules in this Code of Conduct for Judicial Appointees that are applicable.

**Source:** This Rule is derived from Rule 1.1 of the MCJC.

#### Rule 1.2. PROMOTING CONFIDENCE IN THE JUDICIARY

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

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

[2] A **judicial appointee** 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 **judicial appointee** 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] **Judicial appointees** should participate in activities that promote ethical conduct among **judicial appointees** 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 **judicial appointee's** ability to carry out the responsibilities of the **judicial appointee's** position with competence, **impartiality**, and integrity is impaired.

[6] A **judicial appointee** should, where appropriate, 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 **judicial appointee** must act in a manner consistent with this Code.

**Source:** This Rule is derived from Rule 1.2 of the MCJC.

**Rule 1.3. AVOIDING LENDING THE PRESTIGE OF THE POSITION**

A **judicial appointee** shall not lend the prestige of the **judicial appointee's** position to advance the personal or

economic interests of the **judicial appointee** or others, or allow others to do so.

COMMENT

[1] It is improper for a **judicial appointee** 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 **judicial appointee** to allude to his or her official status to gain favorable treatment in encounters with traffic officials. Similarly, a **judicial appointee** must not use an official letterhead to gain an advantage in conducting his or her personal business.

[2] A **judicial appointee** may provide a reference or recommendation for an individual based upon the **judicial appointee's** personal knowledge. The **judicial appointee** may use an official letterhead if the **judicial appointee** 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 appointee's** position.

[3] **Judicial appointees** 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.

[4] Special considerations arise when **judicial appointees**

write or contribute to publications of for-profit entities, whether related or unrelated to the law. A **judicial appointee** should not permit anyone associated with the publication of such materials to exploit the **judicial appointee's** position in a manner that violates this Rule or other applicable law. In contracts for publication of a **judicial appointee's** writing, the **judicial appointee** should retain sufficient control over the advertising to avoid such exploitation.

**Source:** This Rule is derived from Rule 1.3 of MCJC



## SECTION 2.

### RULES GOVERNING THE PERFORMANCE OF A JUDICIAL APPOINTEE'S DUTIES

#### Rule 2.1. GIVING PRECEDENCE TO THE DUTIES OF POSITION

The duties of **the judicial appointee's** position, as prescribed by law and by the conditions and requirements imposed by the appointing authority, shall take precedence over a **judicial appointee's** personal and extra-official activities.

#### COMMENT

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

[2] Although it is not a duty of a **judicial appointee's** position unless prescribed by law, **judicial appointees** 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 extra-official activities, this Rule must be construed in a reasonable manner. Family obligations, illnesses, emergencies, and other permissible extra-official activities may require a **judicial appointee'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.

Judicial appointees must not permit their other activities to interfere with their ability to perform the duties of their public position.

Source: This Rule is derived from Rule 2.1 of MCJC. The last sentence of Comment [3] is new.

### **Rule 2.2. IMPARTIALITY AND FAIRNESS**

A **judicial appointee** shall uphold and apply the law and shall perform all duties of the position impartially and fairly.

#### COMMENT

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

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

[3] When applying and interpreting the law, a **judicial appointee** 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 **judicial appointee** to make reasonable accommodations to ensure self-represented 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 MCJC.

**Rule 2.3. BIAS, PREJUDICE, AND HARASSMENT**

(a) A **judicial appointee** shall perform the duties of the position, including administrative duties, without bias or prejudice.

(b) A **judicial appointee** shall not, in the performance of the **judicial appointee's** 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 **judicial appointee** shall require lawyers in proceedings before the **judicial appointee**, court staff, court officials, and others subject to the **judicial appointee's** direction and control to refrain from similar conduct.

(c) The restrictions of paragraph (b) do not preclude **judicial appointees** 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 **judicial appointee** who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

[2] A **judicial appointee** must avoid conduct that may reasonably be perceived as prejudiced or biased. Examples of manifestations of bias or prejudice include 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, 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 MCJC

**Rule 2.4. EXTERNAL INFLUENCES ON PROFESSIONAL CONDUCT**

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

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

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

COMMENT

[1] An independent judiciary requires that **judicial appointees** decide matters 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 **judicial appointee's** friends or family. Confidence in the judiciary is eroded if a **judicial appointee's** decision-making is perceived to be subject to inappropriate outside influences.

**Source:** This Rule is derived from Rule 2.4 of the MCJC.

**Rule 2.5. COMPETENCE, DILIGENCE, AND COOPERATION**

(a) A **judicial appointee** shall perform the duties of the position competently, diligently, promptly, and without favoritism or nepotism.

(b) A **judicial appointee** shall cooperate with judges, other

**judicial appointees** of the court, and court officials in the administration of court business.

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

COMMENT

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

[2] A **judicial appointee** should seek the necessary docket time, court staff, expertise, and resources to discharge the **judicial appointee's** responsibilities.

[3] Prompt disposition of the court's business requires a **judicial appointee** to devote adequate time to the position in accordance with the requirements imposed by the appointing authority, to be punctual in attendance and expeditious in determining matters under submission, and to take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate with the **judicial appointee** to that end.

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

practices, avoidable delays, and unnecessary costs.

**Source:** This Rule is derived from Rule 2.5 of the MCJC.

**Rule 2.6. ENSURING THE RIGHT TO BE HEARD**

(a) A **judicial appointee** 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 **judicial appointee** 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, **judicial appointees** have before them self-represented litigants whose lack of **knowledge** about the law and about judicial procedures and requirements may inhibit their ability to be heard effectively. A **judicial appointee's** obligation under Rule 2.2 to remain fair and **impartial** does not preclude the **judicial appointee** from making reasonable accommodations to protect a self-represented litigant's right to be heard, so long as those accommodations do not give the self-represented litigant an unfair advantage. This Rule does not

require a **judicial appointee** to make any particular accommodation.

[3] Settlement conferences and referrals to alternative dispute resolution may play an important role in the administration of justice. A **judicial appointee** may play 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 **judicial appointee** 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 **judicial appointee** in settlement discussions, (b) whether the parties and their counsel are relatively sophisticated in legal matters, (c) whether the case will be tried by a judge or a jury, (d) whether the parties participate with their counsel in settlement discussions, (e) whether any parties are self-represented, and (f) the nature of the proceeding.

[4] **Judicial appointees** 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 **judicial appointee** should keep in mind the effect that the **judicial appointee's** participation in settlement discussions may have on both the **judicial appointee's** own views of the case and the perceptions of the



lawyers and the parties if the case remains with the **judicial appointee** after settlement efforts are unsuccessful. Despite a **judicial appointee's** best efforts, there may be instances when information obtained during settlement discussions could influence a **judicial appointee's** decision making during proceedings, and, in such instances, the **judicial appointee** should consider whether disqualification may be appropriate. See Rule 2.11 (a) (1).

**Source:** This Rule is derived from Rule 2.6 of the MCJC.

#### **Rule 2.7. RESPONSIBILITY TO DECIDE**

A **judicial appointee** shall hear and decide matters assigned to the **judicial appointee** 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, **judicial appointees** must be available to decide matters that come before them. The dignity of the court, the **judicial appointee's** respect for fulfillment of the duties of the position, and a proper concern for the burdens that may be imposed upon the judges and the **judicial appointee's** colleagues require that a **judicial appointee** not use disqualification to avoid cases that present difficult, controversial, or unpopular issues.

**Source:** This Rule is derived from Rule 2.7 of the MCJC.

**Rule 2.8. DECORUM AND Demeanor**

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

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

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. **Judicial appointees** can be efficient and businesslike while being patient and deliberate.

**Source:** This Rule is derived from Rule 2.8 of the MCJC, except that Comments [2] and [3] were deleted.

**Rule 2.9. EX PARTE COMMUNICATIONS**

(a) A **judicial appointee** shall not initiate, permit, or consider ex parte communications, or consider other communications made to the **judicial appointee** out of 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 **judicial appointee** reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(B) the **judicial appointee** 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 **judicial appointee** may obtain the advice of a disinterested expert on the law applicable to a proceeding if the **judicial appointee** (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 **judicial appointee** may consult with court staff and court officials whose functions are to aid the **judicial appointee** in carrying out the **judicial appointee's** adjudicative responsibilities, or with a judge, provided the **judicial appointee** does not make a decision based on adjudicative facts that are not made part of the record, and does not abrogate the responsibility personally to decide the matter.

(4) A **judicial appointee** 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 **judicial appointee** may initiate, permit, or consider any ex parte communication when expressly authorized by law to do so.

(6) When serving in a problem-solving program of a Circuit Court or the District Court pursuant to Rule 16-206, a **judicial appointee** may initiate, permit, and consider ex parte communications in conformance with the established protocols for the operation of the program if the parties have expressly consented to those protocols.

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

(c) Unless expressly authorized by law, a **judicial appointee** shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.

Cross reference: See Code, Courts Article, §2-607 (c)(2) authorizing District Court Commissioners to conduct investigations and inquiries into the circumstances of matters presented to determine if probable cause exists for the issuance of a charging document warrant, or criminal summons.

(d) A **judicial appointee** 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 **judicial appointee's** direction and control.

COMMENT

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

[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 self-represented, 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] A **judicial appointee** may consult with judges or other **judicial appointees** on **pending matters**, including a retired judge approved for recall, but must avoid ex parte discussions of a case with judges or **judicial appointees** who have previously been disqualified from hearing the matter or with a judge whom the **judicial appointee knows** has been assigned to hear exceptions to the **judicial appointee's** recommendation in the matter.

[5] The prohibition against a **judicial appointee** investigating the facts in a matter extends to information

available in all mediums, including electronic.

[6] A **judicial appointee** may consult ethics advisory committees, outside counsel, or legal experts concerning the **judicial appointee'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 MCJC.

#### **Rule 2.10. STATEMENTS ON PENDING AND IMPENDING CASES**

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

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

(c) Notwithstanding the restrictions in paragraphs (a) and

(b), a **judicial appointee** may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the **judicial appointee** is a litigant in a non-official capacity.

COMMENT

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

[2] This Rule does not prohibit a **judicial appointee** from commenting on proceedings in which the **judicial appointee** is a litigant in a personal capacity. In cases in which the **judicial appointee** is a litigant in an official capacity, such as a writ of mandamus, the **judicial appointee** 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 **judicial appointee**. 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 from Rule 2.10 of the MCJC.

**Rule 2.11. DISQUALIFICATION**

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

(1) The **judicial appointee** 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 **judicial appointee knows** that the **judicial appointee**, the **judicial appointee'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 **judicial appointee 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 **judicial appointee's** spouse or **domestic partner**;

(B) a person within the third degree of relationship to the **judicial appointee**; or

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

(4) The **judicial appointee**, while a **judicial appointee** or as an applicant for the position, has made a public statement, other than in a court proceeding, decision, or opinion, that



commits or appears to commit the **judicial appointee** to reach a particular result or rule in a particular way in the proceeding or controversy.

(5) The **judicial appointee**:

(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; or

(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.

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

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

(c) A **judicial appointee** 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 **judicial appointee's** disqualification and may ask the parties and their

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

COMMENT

[1] Under this Rule, a **judicial appointee** is disqualified whenever the **judicial appointee'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 **judicial appointee's** obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

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

[4] This procedure gives the parties an opportunity to waive the recusal if the **judicial appointee** agrees. The **judicial appointee** may comment on possible waiver but must

ensure that consideration of the question of waiver is made independently of the **judicial appointee**. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, a **judicial appointee** may request that all parties and their lawyers sign a waiver agreement.

**Source:** This Rule is derived from Rule 2.11 of the MCJC, except that Comment [3] was deleted. Paragraph (a)(6) is derived from Canon 3D (1)(b)(ii) of the former Code of Conduct for Judicial Appointees.

#### **Rule 2.12. SUPERVISORY DUTIES**

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

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

#### **COMMENT**

[1] A **judicial appointee** is responsible for his or her own conduct and for the conduct of others, such as staff, when those persons are acting at the **judicial appointee's** direction or control. A **judicial appointee** may not direct court personnel to

engage in conduct on the **judicial appointee's** behalf or as the **judicial appointee's** representative when such conduct would violate this Code if undertaken by the **judicial appointee**.

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

**Source:** This Rule is derived from Rule 2.12 (a) of the MCJC.

#### **Rule 2.13. ADMINISTRATIVE APPOINTMENTS**

(a) In making **official** administrative appointments, a **judicial appointee**:

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

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

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

#### COMMENT

[1] Consent by the parties to an appointment or an award of compensation does not relieve the **judicial appointee** 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 to either the **judicial appointee** or the **judicial appointee's** spouse or **domestic partner**, or the spouse or **domestic partner** of such relative.

[3] Rule 2.13 does not apply to the appointment or compensation of an employee in the private office of a part-time **judicial appointee**.

**Source:** This Rule is derived from Rule 2.13 of the MCJC, except that the first sentence of Comment [1] was deleted.

#### **Rule 2.14. DISABILITY AND IMPAIRMENT OF OTHERS**

A **judicial appointee** having a reasonable belief that the performance of a lawyer, a judge, or another **judicial appointee** 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, **judicial appointee**, or lawyer in question to 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 **judicial appointee'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 **judicial appointee's** attention, however, the **judicial appointee** may be required to take other action, such as reporting the impaired judge, **judicial appointee**, or lawyer to the appropriate authority, agency, or body. See Rule 2.15.

**Source:** This Rule is derived from Rule 2.14 of the MCJC.

**Rule 2.15. RESPONDING TO JUDICIAL AND LAWYER MISCONDUCT**

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

(b) If other corrective measures are not appropriate or, if attempted, were not successful, a **judicial appointee**:

(1) shall inform the Commission on Judicial Disabilities of facts **known** to the **judicial appointee** that raise a substantial question as to a judge's fitness for office;

(2) shall inform the Attorney Grievance Commission of facts **known** to the **judicial appointee** that raise a substantial question as to a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; and

(3) shall inform the appointing authority of facts **known** to the **judicial appointee** that raise a substantial question as to another **judicial appointee's** fitness for the position.

(c) Acts of a **judicial appointee** required or permitted by paragraphs (a) or (b) of this Rule shall be absolutely privileged.

COMMENT

[1] Permitting a **judicial appointee** to take "corrective" measures gives the **judicial appointee** a wide range of options to deal with unprofessional conduct. Appropriate corrective measures may include direct communication with the judge, lawyer, or other **judicial appointee** 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 Rule 2.15 of the MCJC, except that paragraph (b)(3) is new.

**Rule 2.16. COOPERATION WITH DISCIPLINARY AUTHORITIES**

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

(b) A **judicial appointee** shall not retaliate, directly or indirectly, against a person **known** or suspected to have assisted or cooperated with an investigation of a judge, another **judicial appointee**, 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 **judicial appointees'** 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 MCJC.



## SECTION 3.

### RULES GOVERNING EXTRA-OFFICIAL ACTIVITY

#### Rule 3.1. EXTRA-OFFICIAL ACTIVITIES IN GENERAL

A **judicial appointee** may engage in extra-official activities, except as prohibited by law or this Code. When engaging in extra-official activities, a **judicial appointee** shall not:

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

(b) participate in activities that will lead to frequent disqualification of the **judicial appointee**;

(c) participate in activities that would appear to a reasonable person to undermine the **judicial appointee'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 **independence** and **impartiality** are not compromised, **judicial appointees** are encouraged to engage in appropriate extra-official activities. **Judicial appointees** are uniquely qualified to engage in extra-official 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, **judicial appointees** are permitted and encouraged to engage in educational, religious, charitable, fraternal, or civic extra-official 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 extra-official activities helps integrate **judicial appointees** 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 **judicial appointee**, even outside the **judicial appointee's** official actions, are likely to appear to a reasonable person to call into question the **judicial appointee'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 **judicial appointee's** extra-official 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 extra-official activities, **judicial appointees** must not coerce others or take action that would reasonably be perceived as coercive. For example,

depending upon the circumstances, a **judicial appointee'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 **judicial appointee**.

**Source:** This Rule is derived from Rule 3.1 of the MCJC.

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

A **judicial appointee** 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 **judicial appointee** acquired **knowledge** or expertise in the course of the **judicial appointee's** official duties;

(c) when the **judicial appointee** is acting self-represented in a matter involving the **judicial appointee's** legal or economic interests, or when the **judicial appointee** is acting in a **fiduciary** capacity; or

(d) as permitted by Rule 3.10.

COMMENT

[1] **Judicial appointees** 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, **judicial appointees** must be mindful that they remain subject to other provisions of this Code, such as Rule 1.3, prohibiting them 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 **judicial appointees** from engaging in extra-official activities that would appear to a reasonable person to undermine the **judicial appointee's independence**, integrity, or **impartiality**.

[3] In general, it would be an unnecessary and unfair burden to prohibit **judicial appointees** 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, **judicial appointees** must not refer to their official positions, and must otherwise exercise caution to avoid using the prestige of their position.

**Source:** This Rule is derived from Rule 3.2 of the MCJC.

**Rule 3.3. TESTIFYING AS A CHARACTER WITNESS**

A **judicial appointee** 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 **judicial appointee** who, without being subpoenaed, testifies as a character witness abuses the prestige of the position to advance the interests of another. See Rule 1.3. Except in unusual circumstances where the demands of justice require, a **judicial appointee** should discourage a party from requiring the **judicial appointee** to testify as a character witness.

**Source:** This Rule is derived from Rule 3.3 of the MCJC.

**Rule 3.4. APPOINTMENT TO GOVERNMENTAL POSITIONS**

A **judicial appointee** shall not accept appointment to: (a) a Judicial Nominating Commission or (b) any other governmental committee, board, commission, or 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 **judicial appointees** accepting appointments to entities that concern the law, the legal system, or the administration of justice. Even

in such instances, however, a **judicial appointee** 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 **judicial appointee's** time commitments, and giving due regard to the requirements of the **independence** and **impartiality** of the judiciary.

[2] A **judicial appointee** 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 **judicial appointee** 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 MCJC.

**Rule 3.5. USE OF NONPUBLIC INFORMATION**

A **judicial appointee** shall not intentionally disclose or use nonpublic information acquired in an official capacity for any purpose unrelated to the **judicial appointee's** official 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.

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COMMENT

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

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

**Source:** This Rule is derived from Rule 3.5 of the MCJC.

**Rule 3.6. AFFILIATION WITH DISCRIMINATORY ORGANIZATIONS**

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

COMMENT

[1] A **judicial appointee'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 **judicial appointee's** membership in an organization that practices invidious discrimination creates the perception that the **judicial appointee'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 **judicial appointees** 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 **judicial appointee** learns that an organization to which the **judicial appointee** belongs engages in invidious discrimination, the **judicial appointee** must resign immediately from the organization.

[4] A **judicial appointee'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 MCJC.

**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 **judicial appointee** 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 judicial appointee's family**, judges, or other **judicial appointees** over whom the **judicial appointee** does not exercise supervisory 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 **judicial appointee** 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 **judicial appointee**; or

(B) will frequently be engaged in adversary proceedings in the appointing court.

(b) A **judicial appointee** 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 **judicial appointee** should consider whether the membership and purposes of the organization or the nature of the **judicial appointee's**

participation in or association with the organization would conflict with the **judicial appointee's** obligation to refrain from activities that reflect adversely upon a **judicial appointee'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 **judicial appointee** 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 the **judicial appointee's** position.

[4] Identification of a **judicial appointee'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 **judicial appointee's** title or position if comparable designations are used for other persons.

[5] A **judicial appointee** may promote access to justice by encouraging lawyers to participate in pro bono publico legal services, if in doing so the **judicial appointee** does not employ coercion, or abuse the prestige of the **judicial appointee's** position. 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 MCJC.

### **Rule 3.8. APPOINTMENTS TO FIDUCIARY POSITIONS**

(a) Except as provided in paragraph (b), a **judicial appointee** may hold a **fiduciary** position, such as executor, administrator, trustee, guardian, attorney in fact, or other personal representative.

(b) A **judicial appointee** shall not hold a **fiduciary** position if:

(1) doing so would interfere with the proper performance of the **judicial appointee's** official duties; or

(2) the **fiduciary** will likely be engaged in proceedings that would ordinarily come before the **judicial appointee**, or if the estate, trust, or ward becomes involved in adversary proceedings in the appointing court.

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

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

COMMENT

[1] A **judicial appointee** should recognize that other restrictions imposed by this Code may conflict with **the judicial appointee's** obligations as a **fiduciary**; in such circumstances, a **judicial appointee** should resign as **fiduciary**. For example, serving as a **fiduciary** might require frequent disqualification of a **judicial appointee** under Rule 2.11 because a **judicial appointee** 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:** This Rule is derived in part from Rule 3.8 of the MCJC but permits **judicial appointees** to serve as a **fiduciary** in situations in which a judge is not permitted to serve.

**Rule 3.9. SERVICE AS ARBITRATOR OR MEDIATOR**

(a) A full-time **judicial appointee** shall not act as an arbitrator or a mediator or perform other alternative dispute resolution functions apart from the **judicial appointee's** official duties unless expressly authorized by law.

(b) A part-time **judicial appointee** may conduct alternative dispute resolution (ADR) proceedings in a private capacity only if the **judicial appointee**:

(1) conducts no ADR proceedings in a private capacity relating to a matter currently assigned to the **judicial appointee**;

(2) discloses to the parties in each matter assigned to the

**judicial appointee:**

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

(B) whether the **judicial appointee** is conducting, or has conducted within the previous 12 months, an ADR proceeding involving any party, attorney, or law firm involved in the matter assigned to the **judicial appointee**; and

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

(3) except if there is no disqualification by agreement as permitted by Rule 2.11 (c), does not participate in a matter in which the **judicial appointee's impartiality** might reasonably be questioned because of ADR services engaged in or offered by the **judicial appointee**.

COMMENT

[1] This Rule does not prohibit a part-time **judicial appointee** from participating in arbitration, mediation, or other alternative dispute resolution services in a private capacity. See, however, Rule 3.1.

[2] Masters may conduct settlement conferences pursuant to Rules 17-102 (h) and 17-105 (b) as part of assigned official duties. Full-time **judicial appointees** shall not otherwise render dispute resolution services, whether or not for economic gain, unless expressly authorized by law.

**Source:** This Rule is derived in part from Canon 4F of the former Code of Conduct for Judicial Appointees.

**Rule 3.10. PRACTICE OF LAW**

(a) In General

Except as expressly allowed by this Rule, a **judicial appointee** shall not practice law.

(b) Exceptions

(1) A **judicial appointee** may act self-represented in a matter involving the **judicial appointee** or the **judicial appointee's** interest and, if without compensation, may give legal advice to and draft or review documents for a **member of the judicial appointee's family**.

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

(A) the **judicial appointee** shall not use his or her position to further the **judicial appointee's** success in the practice of law; and

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

(c) Prior to assuming official duties, a full-time **judicial appointee** shall enter into an agreement for payments relating to



the **judicial appointee's** former law practice. A payment period limited to a maximum of five years is presumptively reasonable.

COMMENT

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

**Source:** This Rule is derived from Canon 4G of the former Maryland Code of Conduct for Judicial Appointees.

**Rule 3.11. FINANCIAL, BUSINESS, OR REMUNERATIVE ACTIVITIES**

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

(b) (1) Except as permitted by Rule 3.7, a **judicial appointee** shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that a **judicial appointee** may manage or participate in:

(A) a business closely held by the **judicial appointee** or **members of the judicial appointee's family**; or

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

(2) This section does not apply to a part-time **judicial appointee**.

(c) A **judicial appointee** shall not engage in financial activities permitted under paragraphs (a) or (b) if they will:

(1) interfere with the proper performance of the **judicial appointee's** official duties;

(2) lead to frequent disqualification of the **judicial appointee**;

(3) involve the **judicial appointee** in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the appointing court; or

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

COMMENT

[1] **Judicial appointees** 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 extra-official activities, is subject to the requirements of this Code. For example, it would be improper for a **judicial appointee** to spend so much time on business activities that it interferes with the performance of the **judicial appointee's** official duties. See Rule 2.1. Similarly, it would be improper for a **judicial appointee** to use his or her official title or 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 **judicial appointee** must divest himself or herself of investments and other financial interests that might require frequent disqualification or otherwise violate this Rule.

**Source:** This Rule is derived from Rule 3.11 of the MCJC.

### **Rule 3.12. COMPENSATION FOR EXTRA-OFFICIAL ACTIVITIES**

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

#### COMMENT

[1] A **judicial appointee** 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 **judicial appointee** should be mindful, however, that official duties must take precedence over other activities.

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

**Source:** This Rule is derived from Rule 3.12 of the MCJC.

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

(a) A **judicial appointee** 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 **judicial appointee's independence**, integrity, or **impartiality**.

(b) Unless otherwise prohibited by law, or by paragraph (a), a **judicial appointee** 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 **judicial appointee** would in any event require disqualification of the **judicial appointee** 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 **judicial appointees**;

(5) rewards and prizes given to competitors or participants

in random drawings, contests, or other events that are open to persons who are not **judicial appointees**;

(6) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not **judicial appointees**, 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 **judicial appointee** residing in the **judicial appointee's** household, but that incidentally benefit the **judicial appointee**.

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

(10) invitations to the **judicial appointee** and the **judicial appointee'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 **judicial appointee's** educational, religious, charitable, fraternal or civic activities permitted by this Code, if the same invitation is offered to persons who are not **judicial appointees** who are

engaged in similar ways in the activity as is the **judicial appointee**.

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COMMENT

[1] Whenever a **judicial appointee** 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 **judicial appointee'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 **judicial appointee's independence**, integrity, or **impartiality** is low. As the value of the benefit or the likelihood that the source of the benefit will appear before the **judicial appointee** increases, the **judicial appointee** 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 **judicial appointee's independence**, integrity, or **impartiality** has been compromised. In addition, when the appearance of friends or relatives in a case would require the **judicial appointee's** disqualification under Rule 2.11, there would be no opportunity for a **gift** to influence the **judicial appointee's** decision-making. Paragraph (b)(2) places no restrictions upon the ability of a **judicial appointee** to accept **gifts** or other

things of value from friends or relatives under these circumstances.

[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 **judicial appointee** may freely accept such benefits if they are available to the general public, or if the **judicial appointee** qualifies for the special price or discount according to the same criteria as are applied to persons who are not **judicial appointees**. As an example, loans provided at generally prevailing interest rates are not **gifts**, but a **judicial appointee** 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 **judicial appointee** also possesses.

[4] Rule 3.13 applies only to acceptance of **gifts** or other things of value by a **judicial appointee**. Nonetheless, if a **gift** or other benefit is given to the **judicial appointee's** spouse, **domestic partner**, or **member of the judicial appointee's family** residing in the **judicial appointee's** household, it may be viewed as an attempt to evade Rule 3.13 and influence the **judicial appointee** indirectly. Where the **gift** or benefit is being made

primarily to such other persons, and the **judicial appointee** is merely an incidental beneficiary, this concern is reduced. A **judicial appointee** should, however, remind **family and household members** of the restrictions imposed upon **judicial appointees** 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 **judicial appointee's** campaign for judicial office.

**Source:** This Rule is derived from Rule 3.13 of the MCJC.

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

(a) Unless otherwise prohibited by Rule 3.1, Rule 3.13 (a), or other law, a **judicial appointee** 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 **judicial appointee's** employing entity, if the expenses or charges are associated with the **judicial appointee's** participation in extra-official 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 **judicial appointee** and, when appropriate to the occasion, by the **judicial appointee's**



spouse, **domestic partner**, or guest.

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COMMENT

[1] Educational, civic, religious, fraternal, and charitable organizations often sponsor meetings, seminars, symposia, dinners, awards ceremonies, and similar events. **Judicial appointees** 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 extra-official activities is also permitted and encouraged by this Code.

[2] Not infrequently, sponsoring organizations invite certain **judicial appointees** 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 **judicial appointee's** decision whether to accept reimbursement of expenses or a waiver or partial waiver of fees or charges in connection with these or other extra-official activities must be based upon an assessment of all the circumstances. The **judicial appointee** 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 **judicial appointee** must assure himself or herself that acceptance of reimbursement or fee waivers would not appear

to a reasonable person to undermine the **judicial appointee's independence**, integrity, or **impartiality**. The factors that a **judicial appointee** 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 **judicial appointee**, or to matters that are likely to come before the **judicial appointee**;

(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 **judicial**

**appointee's** court, thus possibly requiring disqualification of the **judicial appointee** 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 or **judicial appointees**.

**Source:** This Rule is derived from Rule 3.14 of the MCJC.

### **Rule 3.15. REPORTING REQUIREMENTS**

A **judicial appointee** 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 16-816.

**Source:** This Rule is derived from Md. Rule 16-816.

## SECTION 4.

### RULES GOVERNING POLITICAL ACTIVITY

#### Rule 4.1. DEFINITIONS

##### (a) **Applicant**

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

(2) A **judicial appointee** becomes an **applicant** when the **judicial appointee** 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 **judicial appointee** formally withdraws the application.

(3) If the **judicial appointee** 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 **judicial appointee** remains an **applicant** until the Governor makes an appointment to that other judicial office, unless, prior to that time, the **judicial appointee** formally withdraws the application.

**Cross reference:** Executive Order 01.01.2008.04

##### (b) **Candidate for election**

(1) "**Candidate for election**" means a **judicial appointee** who seeks initial election to a Circuit Court or an Orphans' Court.

(2) A **judicial appointee** becomes a **candidate for election** on the date on which the **judicial appointee** 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.

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

(c) **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 derived from Rule 4.1 of the MCJC.

**Rule 4.2. POLITICAL CONDUCT OF JUDICIAL APPOINTEE WHO IS NOT A CANDIDATE**

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

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

**Source:** Rule 4.2 is derived from Rule 4.2 of the MCJC.

**Rule 4.3. POLITICAL CONDUCT OF APPLICANT**

An **applicant** for judicial office may initiate communications or contact with a judicial nominating commission or its members and may seek endorsements for the appointment from any other person or organization, other than a **political organization**.

COMMENT

[1] An **applicant** may initiate communications or contact with a judicial nominating commission or its members, but neither the commission nor its members are obliged to respond to such communications or contact. **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 secretariat to the commissions. This Rule is not intended to permit an applicant to give anything of value to a commission member or to any member of a commission member's immediate family.

**Source:** This Rule is derived from Rule 4.3 of the MCJC.

**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 **judicial appointee**, 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 from Rule 4.4 of the MCJC.

[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 **judicial appointees**, as **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 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 **candidate for election** 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 from Rule 4.4 of the MCJC.

#### **Rule 4.5. APPLICABILITY AND DISCIPLINE**

(a) A **judicial appointee** shall comply with the Rules in this Section 4 and with Rule 8.2 of the Maryland Lawyers' Rules of Professional Conduct (Maryland Rule 16-812). If successful as a **candidate for election**, the **judicial appointee** is subject to judicial discipline for campaign conduct. If unsuccessful, the

**judicial appointee** is subject to attorney discipline for campaign conduct.

**Source:** This Rule is derived from Rule 4.6 of the MCJC.

REPORTER'S NOTE

This Code of Conduct of Judicial Appointees, proposed to replace the current Code set forth in Rule 16-814, is based upon (1) the 2007 ABA Model Code of Judicial Conduct; (2) the revised Maryland Code of Judicial Conduct, which is based on the 2007 ABA Code and was approved in principle by the Court of Appeals on October 4, 2009; (3) the November 10, 2009 recommendations of a group of masters, District Court Commissioners, and others affected by the Code; (4) the December 8, 2009 recommendations of the General Court Administration Subcommittee; and (5) the January 8, 2010 recommendations of the Rules Committee.

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

AMEND Rule 16-816 to delete a reference to a referee, as follows:

Rule 16-816. FINANCIAL DISCLOSURE STATEMENT - JUDICIAL APPOINTEES

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

. . . .

REPORTER'S NOTE

The Rules Committee has determined that courts no longer are appointing "referees" and, therefore, has omitted the term from the proposed revised Code of Conduct for Judicial Appointees (Rule 16-814). The Committee also recommends deleting this obsolete term from Rule 16-816.

MARYLAND RULES OF PROCEDURE

TITLE 16 - COURTS, JUDGES, AND ATTORNEYS

CHAPTER 200 - THE CALENDAR - ASSIGNMENT AND DISPOSITION  
OF MOTIONS AND CASES

ADD new Rule 16-206, as follows:

Rule 16-206. PROBLEM-SOLVING COURT PROGRAMS

(a) Applicability

This Rule applies to problem-solving court programs, which are specialized court dockets or programs that address matters under a court's jurisdiction through a multi-disciplinary and integrated approach incorporating collaboration by the court with other governmental entities, community organizations, and parties.

Committee note: Problem-solving court programs include adult and juvenile drug treatment, DUI, mental health, truancy, and family recovery programs.

(b) Submission of Plan

After consultation with the Office of Problem-Solving Courts and any officials whose participation in the program will be required, the Chief Judge of the District Court or the County Administrative Judge of a circuit court may prepare and submit to the State Court Administrator a detailed plan for a problem-solving program consistent with the protocols and requirements in an Administrative Order of the Chief Judge of the Court of Appeals.

Committee note: Examples of officials to be consulted include individuals in the Office of the State's Attorney; Office of the Public Defender; Department of Juvenile Services; health, addiction, and education agencies; the Division of Parole and Probation; and the Department of Human Resources.

(c) Approval of Plan

After review of the plan, the State Court Administrator shall submit the plan, together with any comments and a recommendation, to the Court of Appeals. The program shall not be implemented until it is approved by the Court of Appeals.

(d) Acceptance of Participant into Program

(1) Written Agreement Required; Contents

As a condition of acceptance into a program and after the advice of counsel, if any, a prospective participant shall execute a written agreement that sets forth:

(A) the requirements of the program,

(B) the protocols of the program, including protocols concerning the authority of the judge to initiate, permit, and consider ex parte communications pursuant to Rule 2.9 of the Maryland Code of Judicial Conduct;

(C) the range of sanctions that may be imposed while the participant is in the program; and

(D) any rights waived by the participant, including any rights under Rule 4-215 or Code, Courts Article, §3-8A-20.

Committee note: The written agreement shall be in addition to any advisements that are required under Rule 4-215 or Code, Courts Article, §3-8A-20, if applicable.

(2) Examination on the Record

The court may not accept the prospective participant

into the program until, after an examination of the prospective participant on the record, the court determines and announces on the record that the prospective participant knowingly and voluntarily enters into the agreement and understands it.

(3) Agreement to be Made Part of the Record

A copy of the agreement shall be made a part of the record.

(e) Immediate Sanctions; Loss of Liberty or Termination from Program

In accordance with the protocols of the program, the court may, for good cause, impose an immediate sanction on a participant, except that if the participant is considered for the imposition of a sanction involving the loss of liberty or termination from the program, the participant shall be afforded notice, an opportunity to be heard, and the right to be represented by counsel before the court makes its decision. If a hearing is required by this section and the participant is unrepresented by counsel, the court shall comply with Rule 4-215 in a criminal action or Code, Courts Article, §3-8A-20 in a delinquency action before holding the hearing.

Committee note: In considering whether a judge should be disqualified pursuant to Rule 2.11 of the Code of Judicial Conduct from post-termination proceedings involving a participant who has been terminated from a problem-solving court program, the judge should be sensitive to any exposure to ex parte communications or inadmissible information the judge may have received while the participant was in the program.

(f) Credit for Incarceration Time Served

If a participant is terminated from a program, any period



of time for which the participant was incarcerated as a sanction during participation in the program shall be credited against any sentence imposed or directed to be executed in the action.

Source: This Rule is new.

REPORTER'S NOTE

Proposed new Rule 16-206 provides a uniform, State-wide procedure for the approval of new problem-solving court programs and the operation of those programs, while allowing jurisdictions flexibility in administering the programs based on each jurisdiction's needs.

## **IDEALS OF PROFESSIONALISM**

Professionalism is the combination of the core values of personal integrity, competency, civility, independence, and public service that distinguish lawyers as the caretakers of the rule of law.

These Ideals of Professionalism emanate from and complement the Maryland Lawyers' Rules of Professional Conduct ("MLRPC"), the overall thrust of which is well-summarized in this passage from the Preamble to those Rules:

"A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers, and public officials."

A failure to observe these Ideals is not of itself a basis for disciplinary sanctions, but the conduct that constitutes the failure may be a basis for disciplinary sanctions if it violates a provision of the MLRPC or other relevant law.

### **Preamble**

Lawyers are entrusted with the privilege of practicing law. They take a firm vow or oath to uphold the Constitution and laws of the United States and the State of Maryland. Lawyers enjoy a distinct position of trust and confidence that carries the

significant responsibility and obligation to be caretakers for the system of justice that is essential to the continuing existence of a civilized society. Each lawyer, therefore, as a custodian of the system of justice, must be conscious of this responsibility and exhibit traits that reflect a personal responsibility to recognize, honor, and enhance the rule of law in this society. The Ideals and some characteristics set forth below are representative of a value system that lawyers must demand of themselves as professionals in order to maintain and enhance the role of legal professionals as the protectors of the rule of law.

#### **Ideals of Professionalism**

*A lawyer should aspire:*

- (1) to put fidelity to clients before self-interest;
- (2) to be a model for others, and particularly for his or her clients, by showing respect due to those called upon to resolve disputes and the regard due to all participants in the dispute resolution processes;
- (3) to avoid all forms of wrongful discrimination in all of his or her activities, including discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, with equality and fairness as the goals;
- (4) to preserve and improve the law, the legal system, and other dispute resolution processes as instruments for the common good;

(5) to make the law, the legal system, and other dispute resolution processes available to all;

(6) to practice law with a personal commitment to the rules governing the profession and to encourage others to do the same;

(7) to preserve the dignity and the integrity of the profession by his or her conduct, because the dignity and the integrity of the profession are an inheritance that must be maintained by each successive generation of lawyers;

(8) to strive for excellence in the practice of law to promote the interests of his or her clients, the rule of law, and the welfare of society; and

(9) to recognize that the practice of law is a calling in the spirit of public service, not merely a business pursuit.

### **Accountability and Trustworthiness**

*A lawyer should understand the principles set forth in this section.*

(1) Punctuality promotes the credibility of a lawyer. Tardiness and neglect denigrate the individual, as well as the legal profession.

(2) Personal integrity is essential to the honorable practice of law. Lawyers earn the respect of clients, opposing counsel, and the courts when they keep their commitments and perform the tasks promised.

(3) Honesty and, subject to legitimate requirements of confidentiality, candid communications promote credibility with

clients, opposing counsel, and the courts.

(4) Monetary pressures that cloud professional judgment and should be resisted.

### **Education, Mentoring, and Excellence**

*A lawyer should:*

(1) make constant efforts to expand his or her legal knowledge and to ensure familiarity with changes in the law that affect a client's interests;

(2) willingly take on the responsibility of promoting the image of the legal profession by educating each client and the public regarding the principles underlying the justice system, and, as a practitioner of a learned art, by conveying to everyone the importance of professionalism;

(3) attend continuing legal education programs to demonstrate a commitment to keeping abreast of changes in the law;

(4) as a senior lawyer, accept the role of mentor and teacher, whether through formal education programs or individual mentoring of less experienced lawyers; and

(5) understand that mentoring includes the responsibility for setting a good example for another lawyer, as well as an obligation to ensure that each mentee learns the principles enunciated in these Ideals and adheres to them in practice.

### **A Calling to Service**

*A lawyer should:*

(1) serve the public interest by communicating clearly with

clients, opposing counsel, judges, and the general public;

(2) consider the impact on others when scheduling events. Reasonable requests for schedule changes should be accommodated if, in the view of the lawyer, such requests do not impact adversely the merits of the client's position;

(3) maintain an open and respectful dialogue with clients and opposing counsel;

(4) respond to all communications promptly, even if more time is needed to formulate a complete answer, and understand that delays in returning telephone calls or answering mail may leave the impression that the communication was unimportant or that the message was lost, and such delays increase tension and frustration;

(5) keep a client apprised of the status of important matters affecting the client and inform the client of the frequency with which information will be provided, understanding that some matters will require regular contact, while others will require only occasional communication;

(6) always explain a client's options or choices with sufficient detail to help the client make an informed decision;

(7) reflect a spirit of respect in all interactions with opposing counsel, parties, staff, and the court; and

(8) accept responsibility for ensuring that justice is available to every person and not just those with financial means.

### **Fairness, Civility, and Courtesy**

*A lawyer should:*

(1) act fairly in all dealings as a way of promoting the

system of justice;

(2) understand that an excess of zeal may undermine a client's cause and hamper the administration of justice and that a lawyer can advocate zealously a client's cause in a manner that remains fair and civil;

(3) know that zeal requires only that the client's interests are paramount and therefore warrant use of negotiation and compromise, when appropriate, to achieve a beneficial outcome, understanding that yelling, intimidating, issuing ultimatums, and using an "all or nothing" approach may constitute bullying, not zealous advocacy;

(4) seek to remain objective when advising a client about the strengths and weaknesses of the client's case or work;

(5) not allow a client's improper motives, unethical directions, or ill-advised wishes to influence a lawyer's actions or advice, such as when deciding whether to consent to an extension of time requested by an opponent, and make that choice based on the effect, if any, on the outcome of the client's case and not on the acrimony that may exist between the parties;

(6) when appropriate and consistent with duties to the client, negotiate in good faith in an effort to avoid litigation and, where indicated, suggest alternative dispute resolution;

(7) use litigation tools to strengthen the client's case, but avoid using litigation tactics in a manner solely to harass, intimidate, or overburden an opposing party; and

(8) note explicitly any changes made to documents submitted for review by opposing counsel, understanding that fairness is undermined by attempts to insert or delete language without notifying the other party or the party's lawyer.

*A lawyer should understand that:*

(1) professionalism requires civility in all dealings, showing respect for differing points of view, and demonstrating empathy for others;

(2) courtesy does not reflect weakness; rather, it promotes effective advocacy by ensuring that parties have the opportunity to participate in the process without personal attacks or intimidation;

(3) maintaining decorum in every venue, especially in the courtroom, is neither a relic of the past nor a sign of weakness; it is an essential component of the legal process;

(4) professionalism is enhanced by preparing scrupulously for meetings and court appearances and by showing respect for the court, opposing counsel, and the parties through courteous behavior and respectful attire;

(5) courtesy and respect should be demonstrated in all contexts, not just with clients and colleagues, or in the courtroom, but also with support staff and court personnel;

(6) hostility between clients should not become grounds for a lawyer to show hostility or disrespect to a party, opposing counsel, or the court;



(7) patience enables a lawyer to exercise restraint in volatile situations and to defuse anger, rather than elevate the tension and animosity between parties or lawyers; and

(8) the Ideals of Professionalism are to be observed in all manner of communication, and a lawyer should resist the impulse to respond uncivilly to electronic communications in the same manner as he or she would resist such impulses in other forms of communication.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 600 - JUDGMENT

AMEND Rule 2-611 to specify the form of affidavit accompanying a complaint seeking a confessed judgment, to require the court to direct the clerk to enter a confessed judgment under certain circumstances, and to require the court to dismiss the complaint under certain circumstances, as follows:

Rule 2-611. CONFESSED JUDGMENT

~~(a) Entry of Judgment~~

~~Judgment by confession shall be entered by the clerk upon the filing of a complaint, the original or a photocopy of the written instrument authorizing the confession of judgment for a liquidated amount, and an affidavit specifying the amount due and stating the address of the defendant or that the whereabouts of the defendant are unknown to the plaintiff.~~

(a) Complaint; Written Instrument and Affidavit Required

A complaint seeking a confessed judgment shall be accompanied by the original or a copy of the written instrument authorizing the confession of judgment for a liquidated amount and an affidavit in the following form:

Affidavit for Judgment by Confession

1. I, \_\_\_\_\_, am competent to testify.

(Name of Affiant)

2. I am:  the plaintiff in this action.

or

\_\_\_\_\_.

(If the Affiant is not the plaintiff, state the  
Affiant's relationship to the action.)

3. The original or a copy of the written instrument authorizing  
the confession of judgment against the defendant is attached  
to the complaint.

4. The amount due and owing under the instrument is:

<u>Principal</u>	<u>\$ _____</u>
<u>Interest</u>	<u>\$ _____</u>
<u>Attorneys' Fees</u>	<u>\$ _____</u>
<u>Total</u>	<u>\$ _____</u>

5. The address of the defendant is:

\_\_\_\_\_.

or

unknown, and the following efforts to locate the  
defendant have been made: \_\_\_\_\_

\_\_\_\_\_  
(State specific details of the efforts made,  
including by whom and when the efforts were made.)

6. The instrument does not evidence or arise from a consumer  
loan as to which a confessed judgment clause is prohibited by  
Code, Commercial Law Article, §12-311 (b).

7. The instrument does not evidence or arise from a consumer transaction as to which a confessed judgment clause is prohibited by Code, Commercial Law Article, §13-301.

8. The instrument is not subject to the Maryland Retail Installment Sales Act as to which a confessed judgment clause is prohibited by Code, Commercial Law Article, §12-607.

I solemnly affirm under the penalties of perjury that the contents of the foregoing Affidavit are true to the best of my knowledge, information, and belief.

\_\_\_\_\_  
(Signature of Affiant)

\_\_\_\_\_  
(Date)

(b) Action by Court

If the court determines that (1) the complaint complies with the requirements of section (a) of this Rule and (2) the pleadings and papers demonstrate a factual and legal basis for entitlement to a confessed judgment, the court shall direct the clerk to enter the judgment. Otherwise, it shall dismiss the complaint.

~~(b)~~ (c) Notice

Promptly upon entry of a judgment by confession, the clerk, instead of a summons, shall issue a notice informing the defendant of entry of judgment and of the latest time for filing a motion to open, modify, or vacate the judgment. If the address of the defendant is stated in the affidavit, the notice and copies of the

original pleadings shall be served on the defendant in accordance with Rule 2-121. If the court is satisfied from ~~an~~ the affidavit filed by the plaintiff that despite reasonable efforts the defendant cannot be served or the whereabouts of the defendant cannot be determined, the court shall provide for notice to the defendant in accordance with Rule 2-122.

~~(c)~~ (d) Motion by Defendant

The defendant may move to open, modify, or vacate the judgment within the time prescribed for answering by sections (a) and (b) of Rule 2-321. The motion shall state the legal and factual basis for the defense to the claim.

~~(d)~~ (e) Disposition of Motion

If the court finds that there is a substantial and sufficient basis for an actual controversy as to the merits of the action, the court shall order the judgment by confession opened, modified, or vacated and permit the defendant to file a responsive pleading.

~~(e)~~ (f) Delay of Enforcement

Unless the court orders otherwise, property shall not be sold in execution of a judgment by confession and wages or other debt shall not be remitted by a garnishee to the judgment creditor until the expiration of the time for filing a motion under section ~~(e)~~ (d) of this Rule and the disposition of any motion so filed.

Source: This Rule is derived as follows:

Section (a) is in part derived from former Rule 645 a and in part new.

Section (b) is new.

Section ~~(b)~~ (c) is new. The last sentence is consistent with former Rule 645 e.

Section ~~(c)~~ (d) is derived from former Rule 645 c.

Section ~~(d)~~ (e) is derived from former Rule 645 d.

Section (e) (f) is new but is consistent with former Rule 645 i.

#### REPORTER'S NOTE

The Chief Judge of the District Court has brought to the attention of the Rules Committee the problem of the confessed judgment Rules being used for the entry of judgments based on illegal contracts and fraudulent misrepresentations.

To address this problem, the Committee recommends amendments to Rules 2-611 and 3-611.

Proposed to be added to the Rules as part of new section (a) is a mandatory form of affidavit that includes a statement of the principal, interest, and attorneys' fees claimed to be due and owing under the instrument; specific details of efforts to locate a defendant whose whereabouts are claimed to be unknown; and three specific representations (Statement Nos. 6, 7, and 8) concerning the underlying transaction. Section (a) carries forward the current requirement that the original or a copy of the written instrument authorizing the confession of judgment for a liquidated amount be filed with the complaint.

Pursuant to new section (b), judgment is not automatically entered by the clerk, but the complaint is reviewed by the court. If the court determines that the requirements of section (a) are met and that the papers and pleadings demonstrate a factual and legal basis for entitlement to a confessed judgment, the court directs entry of the confessed judgment. If these requirements are not met, the court dismisses the complaint. At present, the clerk routinely enters judgment, subject to a motion to vacate. However, the Committee is advised that defendants often do not know to file such a motion, and some are victims of fraud and are never served.

Current section (f) of Rule 3-611 is deleted as unnecessary, in light of Statement No. 8 of the required affidavit.

MARYLAND RULES OF PROCEDURE  
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT  
CHAPTER 600 - JUDGMENT

AMEND Rule 3-611 to specify the form of affidavit accompanying a complaint seeking a confessed judgment, to require the Court to direct the clerk to enter a confessed judgment under certain circumstances, to require the Court to dismiss the complaint under certain circumstances, and to delete section (f), as follows:

Rule 3-611. CONFESSED JUDGMENT

~~(a) Entry of Judgment~~

~~Judgment by confession shall be entered by the clerk upon the filing of a complaint, the original or a photocopy of the written instrument authorizing the confession of judgment for a liquidated amount, and an affidavit specifying the amount due and stating the address of the defendant or that the whereabouts of the defendant are unknown to the plaintiff.~~

(a) Complaint; Written Instrument and Affidavit Required

A complaint seeking a confessed judgment shall be accompanied by the original or a copy of the written instrument authorizing the confession of judgment for a liquidated amount and an affidavit in the following form:

Affidavit for Judgment by Confession

1. I, \_\_\_\_\_, am competent to testify.  
(Name of Affiant)

2. I am:  the plaintiff in this action.

or

\_\_\_\_\_.  
(If the Affiant is not the plaintiff, state the  
Affiant's relationship to the action.)

3. The original or a copy of the written instrument authorizing  
the confession of judgment against the defendant is attached  
to the complaint.

4. The amount due and owing under the instrument is:

<u>Principal</u>	\$ _____
<u>Interest</u>	\$ _____
<u>Attorneys' Fees</u>	\$ _____
<u>Total</u>	\$ _____

5. The address of the defendant is:

\_\_\_\_\_.

or

unknown, and the following efforts to locate the  
defendant have been made: \_\_\_\_\_

\_\_\_\_\_  
(State specific details of the efforts made, including  
by whom and when the efforts were made.)

6. The instrument does not evidence or arise from a consumer  
loan as to which a confessed judgment clause is prohibited by  
Code, Commercial Law Article, §12-311 (b).



7. The instrument does not evidence or arise from a consumer transaction as to which a confessed judgment clause is prohibited by Code, Commercial Law Article, §13-301.

8. The instrument is not subject to the Maryland Retail Installment Sales Act as to which a confessed judgment clause is prohibited by Code, Commercial Law Article, §12-607.

I solemnly affirm under the penalties of perjury that the contents of the foregoing Affidavit are true to the best of my knowledge, information, and belief.

\_\_\_\_\_  
(Signature of Affiant)

\_\_\_\_\_  
(Date)

(b) Action by Court

If the court determines that (1) the complaint complies with the requirements of section (a) of this Rule and (2) the pleadings and papers demonstrate a factual and legal basis for entitlement to a confessed judgment, the court shall direct the clerk to enter the judgment. Otherwise, it shall dismiss the complaint.

~~(b)~~ (c) Notice

Promptly upon entry of a judgment by confession, the clerk, instead of a summons, shall issue a notice informing the defendant of entry of judgment and of the latest time for filing a motion to open, modify, or vacate the judgment. If the address of the defendant is stated in the affidavit, the notice and copies of the

original pleadings shall be served on the defendant in accordance with Rule 3-121. If the court is satisfied from ~~an~~ the affidavit filed by the plaintiff that despite reasonable efforts the defendant cannot be served or the whereabouts of the defendant cannot be determined, the court shall provide for notice to the defendant in accordance with Rule 2-122.

~~(e)~~ (d) Motion by Defendant

The defendant may move to open, modify, or vacate the judgment within 30 days after service of the notice. The motion shall state the legal and factual basis for the defense to the claim.

~~(d)~~ (e) Disposition of Motion

If the court finds that there is a substantial and sufficient basis for an actual controversy as to the merits of the action, the court shall order the judgment by confession opened, modified, or vacated and permit the defendant to file a responsive pleading.

~~(e)~~ (f) Delay of Enforcement

Unless the court orders otherwise, property shall not be sold in execution of a judgment by confession and wages or other debt shall not be remitted by a garnishee to the judgment creditor until the expiration of the time for filing a motion under section ~~(e)~~ (d) of this Rule and the disposition of any motion so filed.

~~(f)~~ ~~Plaintiff's Certificate~~

~~Judgment by confession may be entered only when accompanied by a certificate executed by the plaintiff or plaintiff's attorney~~

~~in the following form: "I hereby certify that the instrument authorizing confession of judgment was not executed by a buyer under the Retail Installment Sales Act, Commercial Law Article, Sections 12-601 through 12-636, of the Annotated Code of Maryland."~~

Source: This Rule is derived as follows:

Section (a) is in part derived from former M.D.R. 645 a and in part new.

Section (b) is new.

Section ~~(b)~~ (c) is new. The last sentence is consistent with former Rule 645 e.

Section ~~(c)~~ (d) is derived from former M.D.R. 645 c.

Section ~~(d)~~ (e) is derived from former M.D.R. 645 d.

Section ~~(e)~~ (f) is new but is consistent with former M.D.R. 645 i.

~~Section (f) is derived from former M.D.R. 645 j.~~

#### REPORTER'S NOTE

See the Reporter's note to Rule 2-611.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 500 - TRIAL

ADD new Rule 2-513, as follows:

Rule 2-513. TESTIMONY TAKEN BY TELEPHONE

(a) Definition

In this Rule, "telephone" means a landline telephone and does not include a cellular phone.

(b) When Testimony Taken by Telephone Allowed; Applicability

A court may allow the testimony of a witness to be taken by telephone (1) upon stipulation by the parties or (2) subject to sections (e) and (f) of this Rule, on motion of a party to the action and for good cause shown. This Rule applies only to testimony by telephone and does not preclude testimony by other remote means allowed by law or, with the approval of the court, agreed to by the parties.

Cross reference: For an example of testimony by other means allowed by law, see Code, Family Law Article, §9.5-110.

(c) Time for Filing Motion

Unless for good cause shown the court allows the motion to be filed later, a motion to take the testimony of a witness by telephone shall be filed at least 30 days before the trial or hearing at which the testimony is to be offered.

(d) Contents of Motion

The motion shall state the witness's name and, unless

excused by the court:

(1) the address and telephone number of the witness;

(2) the subject matter of the witness's expected testimony;

(3) the reasons why testimony taken by telephone should be allowed, including any circumstances listed in section (e) of this Rule;

(4) the location from which the witness will testify;

(5) whether there will be any other individual present in the room with the witness while the witness is testifying and, if so, the reason for the individual's presence and the individual's name, if known; and

(6) whether transmission of the witness's testimony will be from a wired handset, a wireless handset connected to the landline, or a speaker phone.

(e) Good Cause

A court may find that there is good cause to allow the testimony of a witness to be taken by telephone if:

(1) the witness is otherwise unavailable to appear because of age, infirmity, or illness;

(2) personal appearance of the witness cannot be secured by subpoena or other reasonable means;

(3) a personal appearance would be an undue hardship to the witness; or

(4) there are any other circumstances that constitute good cause for allowing the testimony of the witness to be taken by telephone.

Committee note: This section applies to the witness's unavailability to appear personally in court, not to the witness's unavailability to testify.

(f) When Testimony Taken by Telephone is Prohibited

If a party objects, a court shall not allow the testimony of a witness to be taken by telephone if the court finds that:

- (1) the witness is a party or will be testifying as an expert;
- (2) the testimony is to be offered in a jury trial;
- (3) the demeanor and credibility of the witness are or may be critical to the outcome of the proceeding;
- (4) the issue or issues about which the witness is to testify are or may be so determinative of the outcome of the proceeding that the opportunity for face-to-face cross-examination is needed;
- (5) a deposition taken under these Rules is a fairer way to present the testimony;
- (6) the exhibits or documents about which the witness is to testify are so voluminous that testimony by telephone is not practical;
- (7) adequate facilities for taking the testimony by telephone are not available;
- (8) failure of the witness to appear in person will or may cause substantial prejudice to a party; or
- (9) other circumstances require the personal appearance of the witness.

(g) Use of Deposition

A deposition of a witness whose testimony is received by

telephone may be used by any party for any purpose for which the deposition could have been used had the witness appeared in person.

(h) Costs

Unless the court orders otherwise for good cause, all costs of testimony taken by telephone shall be paid by the movant and may not be charged to any other party.

Source: This Rule is new.

REPORTER'S NOTE

Proposed new Rules 2-513 and 3-513 are based upon the request of the Section Council of the Judicial Administration Section of the Maryland State Bar Association. The Rules allow the testimony of witnesses to be taken by telephone, under certain circumstances.

The Rules Committee is working on the development of Rules proposals dealing with a broader range of remote access in court proceedings, including the use of video transmissions and access via computers. It is anticipated that the broader Rules will subsume Rules that pertain solely to telephone access.

The Section Council has specifically requested that rules pertaining to testimony by telephone be promulgated as quickly as possible. In accordance with this request, proposed new Rules 2-513 and 3-513 are being advanced.

MARYLAND RULES OF PROCEDURE  
TITLE 3 - CIVIL PROCEDURE - DISTRICT COURT  
CHAPTER 500 - TRIAL

ADD new Rule 3-513, as follows:

Rule 3-513. TESTIMONY TAKEN BY TELEPHONE

(a) Definition

In this Rule, "telephone" means a landline telephone and does not include a cellular phone.

(b) When Testimony Taken by Telephone Allowed; Applicability

A court may allow the testimony of a witness to be taken by telephone (1) upon stipulation by the parties or (2) subject to sections (e) and (f) of this Rule, on motion of a party to the action and for good cause shown. This Rule applies only to testimony by telephone and does not preclude testimony by other remote means allowed by law or, with the approval of the court, agreed to by the parties.

Cross reference: For an example of testimony by other means allowed by law, see Code, Family Law Article, §9.5-110.

(c) Time for Filing Motion

Unless for good cause shown the court allows the motion to be filed later, a motion to take the testimony of a witness by telephone shall be filed at least 30 days before the trial or hearing at which the testimony is to be offered.

(d) Contents of Motion

The motion shall state the witness's name and, unless



excused by the court:

(1) address and telephone number for the witness;

(2) the subject matter of the witness's expected testimony;

(3) the reasons why testimony taken by telephone should be allowed, including any circumstances listed in section (e) of this Rule;

(4) the location from which the witness will testify;

(5) whether there will be any other individual present in the room with the witness while the witness is testifying and, if so, the reason for the individual's presence and the individual's name, if known; and

(6) whether transmission of the witness's testimony will be from a wired handset, a wireless handset connected to the landline, or a speaker phone.

(e) Good Cause

A court may find that there is good cause to allow the testimony of a witness to be taken by telephone if:

(1) the witness is otherwise unavailable to appear because of age, infirmity, or illness;

(2) personal appearance of the witness cannot be secured by subpoena or other reasonable means;

(3) a personal appearance would be an undue hardship to the witness; or

(4) there are any other circumstances that constitute good cause for allowing the testimony of the witness to be taken by telephone.

Committee note: This section applies to the witness's unavailability to appear personally in court, not to the witness's unavailability to testify.

(f) When Testimony Taken by Telephone is Prohibited

If a party objects, a court shall not allow the testimony of a witness to be taken by telephone if the court finds that:

- (1) the witness is a party or will be testifying as an expert;
- (2) the demeanor and credibility of the witness are or may be critical to the outcome of the proceeding;
- (3) the issue or issues about which the witness is to testify are or may be so determinative of the outcome of the proceeding that the opportunity for face-to-face cross-examination is needed;
- (4) a deposition taken under these Rules is a fairer way to present the testimony;
- (5) the exhibits or documents about which the witness is to testify are so voluminous that testimony by telephone is not practical;
- (6) adequate facilities for taking the testimony by telephone are not available;
- (7) failure of the witness to appear in person will or may cause substantial prejudice to a party; or
- (8) other circumstances require the personal appearance of the witness.

(g) Use of Deposition

A deposition of a witness whose testimony is received by telephone may be used by any party for any purpose for which the deposition could have been used had the witness appeared in

person.

(h) Costs

Unless the court orders otherwise for good cause, all costs of testimony taken by telephone shall be paid by the movant and may not be charged to any other party.

Source: This Rule is new.

REPORTER'S NOTE

See the Reporter's Note to Rule 2-513.

MARYLAND RULES OF PROCEDURE  
TITLE 4 - CRIMINAL CAUSES  
CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-262 to add a definition of the word "provide" to section (b); to require that requests pursuant to subsections (d)(2) and (f)(1) and section (e) be made in writing; to require that discovery and inspection be completed pretrial if practicable; to allow the court to grant a delay or continuance if pretrial compliance with a discovery request was impracticable; to add a new section (j) clarifying that requests for discovery, motions for discovery, and any responses thereto are to be filed with the court; and to make stylistic changes, as follows:

Rule 4-262. DISCOVERY IN DISTRICT COURT

(a) Applicability

This Rule governs discovery and inspection in the District Court. Discovery is available in the District Court in actions that are punishable by imprisonment.

(b) Definitions

In this Rule, the terms "defense," "defense witness," "oral statement," "provide," "State's witness," and "written statement" have the meanings stated in Rule 4-263 (b).

Cross reference: For the definition of "State's Attorney," see Rule 4-102 (k).

(c) Obligations of the Parties

(1) Due Diligence

The State's Attorney and defense shall exercise due diligence to identify all of the material and information that must be disclosed under this Rule.

(2) Scope of Obligations

The obligations of the State's Attorney and the defense extend to material and information that must be disclosed under this Rule and that are in the possession or control of the attorney, members of the attorney's staff, or any other person who either reports regularly to the attorney's office or has reported to the attorney's office in regard to the particular case.

Cross reference: For the obligations of the State's Attorney, see *State v. Williams*, 392 Md. 194 (2006).

(d) Disclosure by the State's Attorney

(1) Without Request

Without the necessity of a request, the State's Attorney shall provide to the defense all material or information in any form, whether or not admissible, that tends to exculpate the defendant or negate or mitigate the defendant's guilt or punishment as to the offense charged and all material or information in any form, whether or not admissible, that tends to impeach a State's witness.

Cross reference: See *Brady v. Maryland*, 373 U.S. 83 (1963); *Kyles v. Whitley*, 514 U.S. 419 (1995); *Giglio v. U.S.*, 405 U.S. 150 (1972); *U.S. v. Agurs*, 427 U.S. 97 (1976); *Thomas v. State*, 372 Md. 342 (2002); *Goldsmith v. State*, 337 Md. 112 (1995); and *Lyba v. State*, 321 Md. 564 (1991).

(2) On Request

On written request of the defense, the State's Attorney shall provide to the defense:

(A) Statements of Defendant and Co-defendant

All written and all oral statements of the defendant and of any co-defendant that relate to the offense charged and all material and information, including documents and recordings, that relate to the acquisition of such statements;

(B) Written Statements of State's Witnesses

As to each State's witness ~~whom~~ the State's Attorney intends to call to prove the State's case in chief or to rebut alibi testimony, those written statements of the witness that relate to the offense charged and are (i) signed by or adopted by the witness or (ii) contained in a police or investigative report, together with the name and, except as provided under Code, Criminal Procedure Article, §11-205 or Rule 16-1009(b), the address of the witness;

(C) Searches, Seizures, Surveillance, and Pretrial Identification

All relevant material or information regarding:

(i) specific searches and seizures, eavesdropping, or electronic surveillance including wiretaps; and

(ii) pretrial identification of the defendant by a State's witness;

(D) Reports or Statements of Experts

As to each State's witness the State's Attorney intends to call to testify as an expert witness other than at a

preliminary hearing:

(i) the expert's name and address, the subject matter on which the expert is expected to testify, the substance of the expert's findings and opinions, and a summary of the grounds for each opinion;

(ii) the opportunity to inspect and copy all written reports or statements made in connection with the action by the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison; and

(iii) the substance of any oral report and conclusion by the expert;

(E) Evidence for Use at Trial

The opportunity to inspect, copy, and photograph all documents, computer-generated evidence as defined in Rule 2-504.3(a), recordings, photographs, or other tangible things that the State's Attorney intends to use at a hearing or at trial; and

(F) Property of the Defendant

The opportunity to inspect, copy, and photograph all items obtained from or belonging to the defendant, whether or not the State's Attorney intends to use the item at a hearing or at trial.

(e) Disclosure by Defense

On written request of the State's Attorney, the defense shall provide to the State's Attorney:

(1) Reports or Statements of Experts

As to each defense witness the defense intends to call to

testify as an expert witness:

(A) the expert's name and address, the subject matter on which the expert is expected to testify, the substance of the findings and the opinions to which the expert is expected to testify, and a summary of the grounds for each opinion;

(B) the opportunity to inspect and copy all written reports or statements made in connection with the action by the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison; and

(C) the substance of any oral report and conclusion by the expert; and

(2) Documents, Computer-generated Evidence, and Other Things

The opportunity to inspect, copy, and photograph any documents, computer-generated evidence as defined in Rule 2-504.3(a), recordings, photographs, or other tangible things that the defense intends to use at a hearing or at trial.

(f) Person of the Defendant

(1) On Request

On written request of the State's Attorney that includes reasonable notice of the time and place, the defendant shall appear for the purpose of:

(A) providing fingerprints, photographs, handwriting exemplars, or voice exemplars;

(B) appearing, moving, or speaking for identification in a lineup; or

(C) trying on clothing or other articles.



(2) On Motion

On motion filed by the State's Attorney, with reasonable notice to the defense, the court, for good cause shown, shall order the defendant to appear and (A) permit the taking of buccal samples, samples of other materials of the body, or specimens of blood, urine, saliva, breath, hair, nails, or material under the nails or (B) submit to a reasonable physical or mental examination.

(g) Matters Not Discoverable

(1) By any Party

Notwithstanding any other provision of this Rule, neither the State's Attorney nor the defense is required to disclose (A) the mental impressions, trial strategy, personal beliefs, or other privileged attorney work product or (B) any other material or information if the court finds that its disclosure is not constitutionally required and would entail a substantial risk of harm to any person that outweighs the interest in disclosure.

(2) By the Defense

The State's Attorney is not required to disclose the identity of a confidential informant unless the State's Attorney intends to call the informant as a State's witness or unless the failure to disclose the informant's identity would infringe a constitutional right of the defendant.

(h) Continuing Duty to Disclose

Each party is under a continuing obligation to produce discoverable material and information to the other side. A party

who has responded to a request or order for discovery and who obtains further material information shall supplement the response promptly.

(i) Procedure

To the extent practicable, The the discovery and inspection required or permitted by this Rule shall be completed before the hearing or trial. ~~A request for discovery and inspection and response need not be in writing and need not be filed with the court.~~ If a request was made before the date of the hearing or trial and the request was refused or denied, or pretrial compliance was impracticable, the court may grant a delay or continuance in the hearing or trial to permit the inspection or discovery.

(j) Requests, Motions, and Responses to be Filed with the Court

Requests for discovery, motions for discovery, and any responses to the requests or motions shall be filed with the court.

~~(j)~~ (k) Discovery Material Not to be Filed with the Court

Except as otherwise provided in these Rules or by order of court, discovery material shall not be filed with the court. This section does not preclude the use of discovery material at trial or as an exhibit to support or oppose a motion.

~~(k)~~ (l) Retention; Inspection of Original

The party generating discovery material shall retain the original until the expiration of any sentence imposed on the defendant and, on request, shall make the original available for

inspection and copying by the other party.

~~(l)~~ (m) Protective Orders

On motion of a party or a person from whom discovery is sought, the court, for good cause shown, may order that specified disclosures be denied or restricted in any manner that justice requires.

~~(m)~~ (n) Failure to Comply with Discovery Obligation

The failure of a party to comply with a discovery obligation in this Rule does not automatically disqualify a witness from testifying. If a motion is filed to disqualify the witness's testimony, disqualification is within the discretion of the court.

Source: This Rule is new.

REPORTER'S NOTE

The proposed amendment to Rule 4-262 (b) incorporates into the District Court discovery Rule the amendment to the "Definitions" section of Rule 4-263, which is the addition of a definition of the word "provide."

Amendments to subsections (d)(2) and (f)(1) and section (e) require that certain discovery requests be made in writing.

An amendment to section (i) requires that, to the extent practicable, all discovery and inspections be completed before the hearing or trial. If pretrial compliance with a discovery request was impracticable, the court may grant a delay or continuance to permit inspection or discovery. The Rules Committee believes that specific deadlines for requesting and providing discovery would not be compatible with District Court practice, and therefore declines to recommend the addition of discovery deadlines to Rule 4-262.

A new section (j) is added, stating that requests for discovery, motions for discovery, and any responses to the requests or motions must be filed with the court.

The deletion of the word "whom" from subsection (d)(2)(B) is stylistic, only.

MARYLAND RULES OF PROCEDURE  
TITLE 4 - CRIMINAL CAUSES  
CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-263 to add to section (b) a definition of "provide" and to add a new subsection to section (k) clarifying that requests for discovery, motions for discovery, motions to compel discovery, and any responses thereto are to be filed with the court, as follows:

Rule 4-263. DISCOVERY IN CIRCUIT COURT

(a) Applicability

This Rule governs discovery and inspection in a circuit court.

(b) Definitions

In this Rule, the following definitions apply:

(1) Defense

"Defense" means an attorney for the defendant or a defendant who is acting without an attorney.

(2) Defense Witness

"Defense witness" means a witness whom the defense intends to call at a hearing or at trial.

(3) Oral Statement

"Oral statement" of a person means the substance of a statement of any kind by that person, whether or not reflected in an existing writing or recording.

(4) Provide

Unless otherwise agreed by the parties or required by Rule or order of court, "provide" information or material means (A) to send or deliver it by mail, e-mail, facsimile transmission, or hand-delivery, or (B) to make the information or material available at a specified location for purposes of inspection if sending or delivering it would be impracticable because of the nature of the information or material.

~~(4)~~ (5) State's Witness

"State's witness" means a witness whom the State's Attorney intends to call at a hearing or at trial.

Cross reference: For the definition of "State's Attorney," see Rule 4-102 (k).

~~(5)~~ (6) Written Statement

"Written statement" of a person:

(A) includes a statement in writing that is made, signed, or adopted by that person;

(B) includes the substance of a statement of any kind made by that person that is embodied or summarized in a writing or recording, whether or not signed or adopted by the person;

(C) includes a statement contained in a police or investigative report; but

(D) does not include attorney work product.

(c) Obligations of the Parties

(1) Due Diligence

The State's Attorney and defense shall exercise due

diligence to identify all of the material and information that must be disclosed under this Rule.

(2) Scope of Obligations

The obligations of the State's Attorney and the defense extend to material and information that must be disclosed under this Rule and that are in the possession or control of the attorney, members of the attorney's staff, or any other person who either reports regularly to the attorney's office or has reported to the attorney's office in regard to the particular case.

Cross reference: For the obligations of the State's Attorney, see *State v. Williams*, 392 Md. 194 (2006).

(d) Disclosure by the State's Attorney

Without the necessity of a request, the State's Attorney shall provide to the defense:

(1) Statements

All written and all oral statements of the defendant and of any co-defendant that relate to the offense charged and all material and information, including documents and recordings, that relate to the acquisition of such statements;

(2) Criminal Record

Prior criminal convictions, pending charges, and probationary status of the defendant and of any co-defendant;

(3) State's Witnesses

The name and, except as provided under Code, Criminal Procedure Article, §11-205 or Rule 16-1009 (b), the address of each State's witness whom the State's Attorney intends to call to

prove the State's case in chief or to rebut alibi testimony, together with all written statements of the person that relate to the offense charged;

(4) Prior Conduct

All evidence of other crimes, wrongs, or acts committed by the defendant that the State's Attorney intends to offer at a hearing or at trial pursuant to Rule 5-404 (b);

(5) Exculpatory Information

All material or information in any form, whether or not admissible, that tends to exculpate the defendant or negate or mitigate the defendant's guilt or punishment as to the offense charged;

(6) Impeachment Information

All material or information in any form, whether or not admissible, that tends to impeach a State's witness, including:

(A) evidence of prior conduct to show the character of the witness for untruthfulness pursuant to Rule 5-608 (b);

(B) a relationship between the State's Attorney and the witness, including the nature and circumstances of any agreement, understanding, or representation that may constitute an inducement for the cooperation or testimony of the witness;

(C) prior criminal convictions, pending charges, or probationary status that may be used to impeach the witness, but the State's Attorney is not required to investigate the criminal record of the witness unless the State's Attorney knows or has reason to believe that the witness has a criminal record;



(D) an oral statement of the witness, not otherwise memorialized, that is materially inconsistent with another statement made by the witness or with a statement made by another witness;

(E) a medical or psychiatric condition or addiction of the witness that may impair the witness's ability to testify truthfully or accurately, but the State's Attorney is not required to inquire into a witness's medical, psychiatric, or addiction history or status unless the State's Attorney has information that reasonably would lead to a belief that an inquiry would result in discovering a condition that may impair the witness's ability to testify truthfully or accurately;

(F) the fact that the witness has taken but did not pass a polygraph examination; and

(G) the failure of the witness to identify the defendant or a co-defendant;

Cross reference: See *Brady v. Maryland*, 373 U.S. 83 (1963); *Kyles v. Whitley*, 514 U.S. 419 (1995); *Giglio v. U.S.*, 405 U.S. 150 (1972); *U.S. v. Agurs*, 427 U.S. 97 (1976); *Thomas v. State*, 372 Md. 342 (2002); *Goldsmith v. State*, 337 Md. 112 (1995); and *Lyba v. State*, 321 Md. 564 (1991).

(7) Searches, Seizures, Surveillance, and Pretrial Identification

All relevant material or information regarding:

(A) specific searches and seizures, eavesdropping, and electronic surveillance including wiretaps; and

(B) pretrial identification of the defendant by a State's witness;

(8) Reports or Statements of Experts

As to each expert consulted by the State's Attorney in connection with the action:

(A) the expert's name and address, the subject matter of the consultation, the substance of the expert's findings and opinions, and a summary of the grounds for each opinion;

(B) the opportunity to inspect and copy all written reports or statements made in connection with the action by the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison; and

(C) the substance of any oral report and conclusion by the expert;

(9) Evidence for Use at Trial

The opportunity to inspect, copy, and photograph all documents, computer-generated evidence as defined in Rule 2-504.3 (a), recordings, photographs, or other tangible things that the State's Attorney intends to use at a hearing or at trial; and

(10) Property of the Defendant

The opportunity to inspect, copy, and photograph all items obtained from or belonging to the defendant, whether or not the State's Attorney intends to use the item at a hearing or at trial.

(e) Disclosure by Defense

Without the necessity of a request, the defense shall provide to the State's Attorney:

(1) Defense Witness

The name and, except when the witness declines permission, the address of each defense witness other than the defendant, together with all written statements of each such witness that relate to the subject matter of the testimony of that witness. Disclosure of the identity and statements of a person who will be called for the sole purpose of impeaching a State's witness is not required until after the State's witness has testified at trial.

(2) Reports or Statements of Experts

As to each defense witness the defense intends to call to testify as an expert witness:

(A) the expert's name and address, the subject matter on which the expert is expected to testify, the substance of the findings and the opinions to which the expert is expected to testify, and a summary of the grounds for each opinion;

(B) the opportunity to inspect and copy all written reports or statements made in connection with the action by the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison; and

(C) the substance of any oral report and conclusion by the expert;

(3) Character Witnesses

As to each defense witness the defense intends to call to testify as to the defendant's veracity or other relevant character trait, the name and, except when the witness declines permission, the address of that witness;

(4) Alibi Witnesses

If the State's Attorney has designated the time, place, and date of the alleged offense, the name and, except when the witness declines permission, the address of each person other than the defendant whom the defense intends to call as a witness to show that the defendant was not present at the time, place, or date designated by the State's Attorney;

(5) Insanity Defense

Notice of any intention to rely on a defense of not criminally responsible by reason of insanity, and the name and, except when the witness declines permission, the address of each defense witness other than the defendant in support of that defense; and

Committee note: The address of an expert witness must be provided. See subsection (e)(2)(A) of this Rule.

(6) Documents, Computer-generated Evidence, and Other Things

The opportunity to inspect, copy, and photograph any documents, computer-generated evidence as defined in Rule 2-504.3 (a), recordings, photographs, or other tangible things that the defense intends to use at a hearing or at trial.

(f) Person of the Defendant

(1) On Request

On request of the State's Attorney that includes reasonable notice of the time and place, the defendant shall appear for the purpose of:

(A) providing fingerprints, photographs, handwriting

exemplars, or voice exemplars;

(B) appearing, moving, or speaking for identification in a lineup; or

(C) trying on clothing or other articles.

(2) On Motion

On motion filed by the State's Attorney, with reasonable notice to the defense, the court, for good cause shown, shall order the defendant to appear and (A) permit the taking of buccal samples, samples of other materials of the body, or specimens of blood, urine, saliva, breath, hair, nails, or material under the nails or (B) submit to a reasonable physical or mental examination.

(g) Matters Not Discoverable

(1) By any Party

Notwithstanding any other provision of this Rule, neither the State's Attorney nor the defense is required to disclose (A) the mental impressions, trial strategy, personal beliefs, or other privileged attorney work product or (B) any other material or information if the court finds that its disclosure is not constitutionally required and would entail a substantial risk of harm to any person that outweighs the interest in disclosure.

(2) By the Defense

The State's Attorney is not required to disclose the identity of a confidential informant unless the State's Attorney intends to call the informant as a State's witness or unless the failure to disclose the informant's identity would infringe a

constitutional right of the defendant.

(h) Time for Discovery

Unless the court orders otherwise:

(1) the State's Attorney shall make disclosure pursuant to section (d) of this Rule within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the court pursuant to Rule 4-213, and

(2) the defense shall make disclosure pursuant to section (e) of this Rule no later than 30 days before the first scheduled trial date.

(i) Motion to Compel Discovery

(1) Time

A motion to compel discovery based on the failure to provide discovery within the time required by section (h) of this Rule shall be filed within ten days after the date the discovery was due. A motion to compel based on inadequate discovery shall be filed within ten days after the date the discovery was received.

(2) Content

A motion shall specifically describe the information or material that has not been provided.

(3) Response

A response may be filed within five days after service of the motion.

(4) Certificate

The court need not consider any motion to compel

discovery unless the moving party has filed a certificate describing good faith attempts to discuss with the opposing party the resolution of the dispute and certifying that they are unable to reach agreement on the disputed issues. The certificate shall include the date, time, and circumstances of each discussion or attempted discussion.

(j) Continuing Duty to Disclose

Each party is under a continuing obligation to produce discoverable material and information to the other side. A party who has responded to a request or order for discovery and who obtains further material information shall supplement the response promptly.

(k) Manner of Providing Discovery; ~~Material Not to be Filed with Court~~

(1) By Agreement

Discovery may be accomplished in any manner mutually agreeable to the parties. The parties shall file with the court a statement of their agreement.

(2) If No Agreement

In the absence of an agreement, the party generating the discovery material shall (A) serve on the other party copies of all written discovery material, together with a list of discovery materials in other forms and a statement of the time and place when these materials may be inspected, copied, and photographed, and (B) promptly file with the court a notice that (i) reasonably identifies the information provided and (ii) states the date and

manner of service. On request, the party generating the discovery material shall make the original available for inspection and copying by the other party.

(3) Requests, Motions, and Responses to be Filed with the Court

Requests for discovery, motions for discovery, motions to compel discovery, and any responses to the requests or motions shall be filed with the court.

~~(3)~~ (4) Discovery Material Not to be Filed with the Court

Except as otherwise provided in these Rules or by order of court, discovery material shall not be filed with the court. This section does not preclude the use of discovery material at trial or as an exhibit to support or oppose a motion.

(1) Retention

The party generating discovery material shall retain the original until the earlier of the expiration of (i) any sentence imposed on the defendant or (ii) the retention period that the material would have been retained under the applicable records retention and disposal schedule had the material been filed with the court.

(m) Protective Orders

(1) Generally

On motion of a party or a person from whom discovery is sought, the court, for good cause shown, may order that specified disclosures be denied or restricted in any manner that justice requires.



(2) In Camera Proceedings

On request of a party or a person from whom discovery is sought, the court may permit any showing of cause for denial or restriction of disclosures to be made in camera. A record shall be made of both in court and in camera proceedings. Upon the entry of an order granting relief in an in camera proceeding, all confidential portions of the in camera portion of the proceeding shall be sealed, preserved in the records of the court, and made available to the appellate court in the event of an appeal.

(n) Sanctions

If at any time during the proceedings the court finds that a party has failed to comply with this Rule or an order issued pursuant to this Rule, the court may order that party to permit the discovery of the matters not previously disclosed, strike the testimony to which the undisclosed matter relates, grant a reasonable continuance, prohibit the party from introducing in evidence the matter not disclosed, grant a mistrial, or enter any other order appropriate under the circumstances. The failure of a party to comply with a discovery obligation in this Rule does not automatically disqualify a witness from testifying. If a motion is filed to disqualify the witness's testimony, disqualification is within the discretion of the court.

Source: This Rule is new and is derived in part from former Rule 741 and the 1998 version of former Rule 4-263.

REPORTER'S NOTE

Two amendments to Rule 4-263 are proposed.

A definition of "provide" is added to section (b) to clarify that whenever discovery material and information are to be "provided," the material and information are to be given or sent via mail, e-mail, facsimile transmission, or hand-delivery unless a different method is required by Rule or order of court. A party may require the other party to go to a specified location to inspect the information or material only if, because of the nature of the information or material, it is impracticable to send or deliver it by using one of the four listed methods.

The Rules Committee has been advised that in at least one county in Maryland, the clerk's office regards requests for discovery as discovery material that is not to be filed and, therefore, does not allow the filing of the requests. Since requests for discovery are not discovery material and should be placed in the file of a criminal case, the Committee recommends adding a new subsection to section (k) to clarify that requests for discovery, motions for discovery, motions to compel discovery, and any responses to these are to be filed with the court.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-331 to change the title of the Rule, to add a new section (d) pertaining to DNA evidence, to add a cross reference following section (d), to revise the provisions pertaining to when the court is required to hold a hearing on a motion based on newly discovered evidence, and to make stylistic changes, as follows:

Rule 4-331. MOTIONS FOR NEW TRIAL; REVISORY POWER

(a) Within Ten Days of Verdict

On motion of the defendant filed within ten days after a verdict, the court, in the interest of justice, may order a new trial.

Cross reference: For the effect of a motion under this section on the time for appeal see Rules 7-104 (b) and 8-202 (b).

(b) Revisory Power

The court has revisory power and control over the judgment to set aside an unjust or improper verdict and grant a new trial:

(1) in the District Court, on motion filed within 90 days after its imposition of sentence if an appeal has not been perfected;

(2) in the circuit courts, on motion filed within 90 days after its imposition of sentence.

Thereafter, the court has revisory power and control over the

judgment in case of fraud, mistake, or irregularity.

(c) Newly Discovered Evidence

The court may grant a new trial or other appropriate relief on the ground of newly discovered evidence which could not have been discovered by due diligence in time to move for a new trial pursuant to section (a) of this Rule:

(1) on motion filed within one year after the date the court imposed sentence or the date it received a mandate issued by the Court of Appeals or the Court of Special Appeals, whichever is later;

(2) on motion filed at any time if a sentence of death was imposed and the newly discovered evidence, if ~~proven~~ proved, would show that the defendant is innocent of the capital crime of which the defendant was convicted or of an aggravating circumstance or other condition of eligibility for the death penalty actually found by the court or jury in imposing the death sentence;

(3) on motion filed at any time if the motion is based on DNA identification testing not subject to the procedures of Code, Criminal Procedure Article, §8-201 or other generally accepted scientific techniques the results of which, if ~~proven~~ proved, would show that the defendant is innocent of the crime of which the defendant was convicted.

Committee note: Newly discovered evidence of mitigating circumstances does not entitle a defendant to claim actual innocence. See *Sawyer v. Whitley*, 112 S. Ct. 2514 (1992).

(d) DNA Evidence

If the defendant seeks a new trial or other appropriate

relief under Code, Criminal Procedure Article, §8-201, the defendant shall proceed in accordance with Rules 4-701 through 4-711. On motion by the State, the court may suspend proceedings on a motion for new trial or other relief under this Rule until the defendant has exhausted the remedies provided by Rules 4-701 through 4-711.

Cross reference: For retroactive applicability of Code, Criminal Procedure Article, §8-201, see *Thompson v. State*, \_\_\_ Md. \_\_\_ (No. 78, September Term 2008, filed November 16, 2009).

~~(d)~~ (e) Form of Motion

A motion filed under this Rule shall (1) be in writing, (2) state in detail the grounds upon which it is based, (3) if filed under section (c) of this Rule, describe the newly discovered evidence, and (4) contain or be accompanied by a request for hearing if a hearing is sought.

~~(e)~~ (f) Disposition

The court may hold a hearing on any motion filed under this Rule. ~~and~~ Subject to section (d) of this Rule, the court shall hold a hearing on a motion filed under section (c) if a hearing was requested and the court finds that: (1) if the motion was filed pursuant to subsection (c)(1) of this Rule, it was timely filed, (2) the motion satisfies the requirements of section ~~(d)~~ (e) of this Rule, and a hearing was requested (3) the movant has established a prima facie basis for granting a new trial. The court may revise a judgment or set aside a verdict prior to entry of a judgment only on the record in open court. The court shall state its reasons for setting aside a judgment or verdict and

granting a new trial.

Cross reference: Code, Criminal Procedure Article, §§6-105, 6-106, 11-104, and 11-503.

Source: This Rule is derived from former Rule 770 and M.D.R. 770.

REPORTER'S NOTE

In light of recent statutory changes to Code, Criminal Procedure Article, §8-201 and the addition of new Rules 4-701 through 4-711, all of which pertain to DNA evidence, the Rules Committee recommends adding to Rule 4-331 a new section (d), which (1) directs the defendant to the new Rules pertaining to DNA evidence if the defendant seeks a new trial or other relief under Code, Criminal Procedure Article, §8-201, and (2) allows the court, on motion by the State, to suspend proceedings on a motion for new trial or other relief under Rule 4-331 until the defendant has exhausted the remedies provided by Rules 4-701 through 4-711.

A proposed cross reference after section (d) draws attention to *Thompson v. State*, \_\_\_ Md. \_\_\_ (No. 78, September Term 2008, filed November 16, 2009), which held that Code, Criminal Procedure Article, §8-201 can be applied retroactively.

Proposed amendments to section (e), relettered (f), provide that if a hearing on a motion under section (c) is requested, the court must hold one if: the motion satisfies the requirements of section (d), relettered (e); a prima facie basis for granting a new trial is established by the movant; and, if the motion was filed under subsection (c)(1), it was timely filed.

MARYLAND RULES OF PROCEDURE  
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT  
CHAPTER 500 - TRIAL

AMEND Rule 2-516 to conform the language of section (b) to the language of Rule 4-322 (c), as follows:

Rule 2-516. EXHIBITS AND RECORDINGS

(a) Generally

All exhibits marked for identification, whether or not offered in evidence and, if offered, whether or not admitted, shall form part of the record and, unless the court orders otherwise, shall remain in the custody of the clerk. With leave of court, a party may substitute a photograph or copy for any exhibit.

Cross reference: Rule 16-306.

(b) Audio, Audiovisual, or Visual Recordings

(1) Recording

A party who offers or uses an audio, audiovisual, or visual recording at a hearing or trial shall:

(A) ensure that the recording is marked for identification and made part of the record and that an additional copy is provided to the court, so that it is available for future transcription; ~~and~~

(B) if only a portion of the recording is offered or used, ensure that a description that identifies the portion offered or

used is made part of the record-; and

(C) if the recording is not on a medium in common use by the general public, preserve it, furnish it to the clerk in a manner suitable for transmittal as part of the record on appeal, and upon request present it to an appellate court in a format designated by the court.

(2) Transcript of Recording

A party who offers or uses a transcript of the recording at a hearing or trial shall: ~~(A) ensure that the transcript is made part of the record and provide an additional copy to the court, and (B) if the recording is not on a medium in common use by the general public, preserve it, furnish it to the clerk in a manner suitable for transmittal as part of the record on appeal, and upon request present it to an appellate court in a format designated by the court.~~

Cross reference: For a schedule of retention and disposal of court records, see Rule 16-505.

Source: This Rule is derived in part from former Rule 635 b and is in part new.

REPORTER'S NOTE

The amendments to Rule 2-516 conform its provisions concerning audio, audiovisual, and visual recordings to the language of comparable provisions in a recently adopted amendment to Rule 4-322.



MARYLAND RULES OF PROCEDURE  
TITLE 4 - CRIMINAL CAUSES  
CHAPTER 200 - PRETRIAL PROCEDURES

AMEND Rule 4-216 (c) by adding a new statutory reference, as follows:

Rule 4-216. PRETRIAL RELEASE

. . .

(c) Defendants eligible for release only by a judge

A defendant charged with an offense for which the maximum penalty is death or life imprisonment or with an offense listed under Code, Criminal Procedure Article, §5-202 (a), (b), (c), (d), ~~or (e)~~, or (f) may not be released by a District Court Commissioner, but may be released before verdict or pending a new trial, if a new trial has been ordered, if a judge determines that all requirements imposed by law have been satisfied and that one or more conditions of release will reasonably ensure (1) the appearance of the defendant as required and (2) the safety of the alleged victim, another person, and the community.

. . .

REPORTER'S NOTE

A District Court Commissioner may not authorize the pretrial release of a defendant charged with certain crimes. Chapter 42, Laws of 2009 (HB 88) added another category of crimes to this list. It prohibits a defendant who is charged with specified firearm violations from being released pretrial by a

commissioner if the defendant had previously been convicted of one of the firearm violations listed. A proposed amendment to Rule 4-216 (c) conforms the Rule to the legislation.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-342 (i) to conform to a statutory change, to add language referring to any right to be represented by counsel, and to make stylistic changes, as follows:

Rule 4-342. SENTENCING - PROCEDURE IN NON-CAPITAL CASES

. . .

(i) Advice to the Defendant

(1) At the time of imposing sentence, the court shall cause the defendant to be advised of: (A) any right of appeal, (B) any right of review of the sentence under the Review of Criminal Sentences Act, (C) any right to move for modification or reduction of the sentence, (D) any right to be represented by counsel, and (E) the time allowed for the exercise of these rights.

(2) At the time of imposing a sentence of incarceration for a violent crime as defined in Code, Correctional Services Article, §7-101 and for which a defendant will be eligible for parole as provided in §7-301 (c) or (d) of the Correctional Services Article, the court shall state in open court the minimum time the defendant must serve for the violent crime before becoming eligible for parole or for conditional release under mandatory supervision pursuant to Code, Correctional Services Article, §7-501.

(3) The circuit court shall cause the defendant who was sentenced in circuit court to be advised that within ten days after filing an appeal, the defendant must order in writing a transcript from the court reporter.

. . .

REPORTER'S NOTE

Chapter 584, Laws of 2009 (HB 638) provides that an inmate convicted of a violent crime committed on or after October 1, 2009 is not eligible for a conditional release until after the inmate becomes eligible for parole. It also provides that when a sentence of confinement that is to be served is imposed for a violent crime for which a defendant will be eligible for parole, the court shall state in open court the minimum time the defendant must serve before becoming eligible for parole and before becoming eligible for conditional release under mandatory supervision. The Rules Committee recommends adding language to section (i) of Rule 4-342 to conform to the new legislation.

Additionally, Rule 4-342 is proposed to be amended to include language explicitly requiring the court or counsel at the time of sentencing to advise the defendant of any right to be represented by counsel.

Stylistic changes to the Rule also are made.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-345 to change the placement and revise the language of a Committee note and to add subsection (e)(3) to conform to a certain statute, as follows:

Rule 4-345. SENTENCING - REVISORY POWER OF COURT

. . .

(e) Modification Upon Motion

(1) Generally

Upon a motion filed within 90 days after imposition of a sentence (A) in the District Court, if an appeal has not been perfected or has been dismissed, and (B) in a circuit court, whether or not an appeal has been filed, the court has revisory power over the sentence except that it may not revise the sentence after the expiration of five years from the date the sentence originally was imposed on the defendant and it may not increase the sentence.

Cross reference: Rule 7-112 (b).

Committee note: The court at any time may commit a defendant who is found to have a drug or alcohol dependency to a treatment program in the Department of Health and Mental Hygiene if the defendant voluntarily agrees to participate in the treatment, even if the defendant did not timely file a motion for modification or timely filed a motion for modification that was denied. See Code, Health General Article, §8-507.

(2) Notice to Victims

The State's Attorney shall give notice to each victim and victim's representative who has filed a Crime Victim Notification Request form pursuant to Code, Criminal Procedure Article, §11-104 or who has submitted a written request to the State's Attorney to be notified of subsequent proceedings as provided under Code, Criminal Procedure Article, §11-503 that states (A) that a motion to modify or reduce a sentence has been filed; (B) that the motion has been denied without a hearing or the date, time, and location of the hearing; and (C) if a hearing is to be held, that each victim or victim's representative may attend and testify.

(3) Inquiry by Court

Before considering a motion under this Rule, the court shall inquire if a victim or victim's representative is present. If one is present, the court shall allow the victim or victim's representative to be heard as allowed by law. If a victim or victim's representative is not present and the case is one in which there was a victim, the court shall inquire of the State's Attorney on the record regarding any justification for the victim or victim's representative not being present, as set forth in Code, Criminal Procedure Article, §11-403 (e). If no justification is asserted or the court is not satisfied by an asserted justification, the court may postpone the hearing.

~~Committee note: The court may commit a defendant who is found to have a drug or alcohol dependency to a treatment program in the Department of Health and Mental Hygiene at any time if the defendant voluntarily agrees to participate in the treatment, even if the defendant did not timely file a motion for modification, or if the defendant timely filed a motion for modification that was denied. See Code, Health General Article, §8-507.~~

. . .

REPORTER'S NOTE

Chapter 573, Laws of 2009 (SB 620) amended Code, Criminal Procedure Article, §11-403 to require the court to ascertain from the prosecuting attorney information on the record regarding the presence of the victim or victim's representative. The Rules Committee recommends adding a new subsection to section (e) to conform to the new legislation.

The revised placement of the Committee note that currently follows subsection (e)(2) of the Rule and the changes to the wording of the Committee note are stylistic, only.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-347 by adding a cross reference after section (a) and by adding language to section (c) referring to a judge of the circuit court, as follows:

Rule 4-347. PROCEEDINGS FOR REVOCATION OF PROBATION

(a) How Initiated

Proceedings for revocation of probation shall be initiated by an order directing the issuance of a summons or warrant. The order may be issued by the court on its own initiative or on a verified petition of the State's Attorney or the Division of Parole and Probation. The petition, or order if issued on the court's initiative, shall state each condition of probation that the defendant is charged with having violated and the nature of the violation.

Cross reference: See Code, Criminal Procedure Article, §6-223.

(b) Notice

A copy of the petition, if any, and the order shall be served on the defendant with the summons or warrant.

Cross reference: For victim notification procedures, see Code, Criminal Procedure Article, §§11-104, 11-503, and 11-507.

(c) Release Pending Revocation Hearing

Unless the judge who issues the warrant sets conditions of release or expressly denies bail, a defendant arrested upon a



warrant shall be taken before a judicial officer of the District Court or before a judge of the circuit court without unnecessary delay or, if the warrant so specifies, before a judge of the District Court or circuit court for the purpose of determining the defendant's eligibility for release.

(d) Waiver of Counsel

The provisions of Rule 4-215 apply to proceedings for revocation of probation.

(e) Hearing

(1) Generally

The court shall hold a hearing to determine whether a violation has occurred and, if so, whether the probation should be revoked. The hearing shall be scheduled so as to afford the defendant a reasonable opportunity to prepare a defense to the charges. Whenever practicable, the hearing shall be held before the sentencing judge or, if the sentence was imposed by a Review Panel pursuant to Rule 4-344, before one of the judges who was on the panel. With the consent of the parties and the sentencing judge, the hearing may be held before any other judge. The provisions of Rule 4-242 do not apply to an admission of violation of conditions of probation.

Cross reference: See *State v. Peterson*, 315 Md. 73 (1989), construing the third sentence of this subsection. For procedures to be followed by the court when a defendant may be incompetent to stand trial in a violation of probation proceeding, see Code, Criminal Procedure Article, §3-104.

(2) Conduct of Hearing

The court may conduct the revocation hearing in an

informal manner and, in the interest of justice, may decline to require strict application of the rules in Title 5, except those relating to the competency of witnesses. The defendant shall be given the opportunity to admit or deny the alleged violations, to testify, to present witnesses, and to cross-examine the witnesses testifying against the defendant. If the defendant is found to be in violation of any condition of probation, the court shall (A) specify the condition violated and (B) afford the defendant the opportunity, personally and through counsel, to make a statement and to present information in mitigation of punishment.

Cross reference: See *Hersch and Cleary v. State*, 317 Md. 200 (1989), setting forth certain requirements with respect to admissions of probation violations, and *State v. Fuller*, 308 Md. 547 (1987), regarding the application of the right to confrontation in probation revocation proceedings. For factors related to drug and alcohol abuse treatment to be considered by the court in determining an appropriate sentence, see Code, Criminal Procedure Article, §6-231.

Source: This Rule is new.

#### REPORTER'S NOTE

Chapter 513, Laws of 2009 (SB 145) modified the procedure to revoke probation by providing that the circuit court as well as the District Court may end the period of probation and that the time period for filing a revocation of probation in District Court would be extended. To conform to the new statute, the Rules Committee recommends adding a cross reference to the statute, and, in section (c), a reference to "a judge of the circuit court."

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 300 - TRIAL AND SENTENCING

AMEND Rule 4-348 (b) to add a sentence authorizing the circuit court to stay a sentence of imprisonment and to impose appropriate terms and conditions of release, as follows:

Rule 4-348. STAY OF EXECUTION OF SENTENCE

. . .

(b) Sentence of Imprisonment

The filing of an appeal or a petition for writ of certiorari in any appellate court, including the Supreme Court of the United States, stays a sentence of imprisonment during any period that the defendant is released pursuant to Rule 4-349, unless a court orders otherwise pursuant to section (d) of that Rule. On the filing of a notice of appeal in a case that is tried de novo, the circuit court, on motion or by consent of the parties, may stay a sentence of imprisonment imposed by the District Court and release the defendant pending trial in the circuit court, subject to any appropriate terms and conditions of release.

Cross reference: See Rule 4-349.

. . .

REPORTER'S NOTE

Chapter 680, Laws of 2009 (HB 569) provides that when a criminal appeal that is tried *de novo* is filed, the circuit court may stay a sentence of imprisonment imposed by the District Court and release the defendant pending trial in the circuit court. A proposed amendment to Rule 4-348 conforms section (b) to the new statute. The amendment also makes clear that the circuit court may impose such terms and conditions of release as the court deems appropriate.

MARYLAND RULES OF PROCEDURE

TITLE 4 - CRIMINAL CAUSES

CHAPTER 500 - EXPUNGEMENT OF RECORDS

AMEND Rule 4-501 to change a statutory reference and to add a statutory reference to the cross reference at the end of the Rule, as follows:

Rule 4-501. APPLICABILITY

The procedure provided by this Chapter is exclusive and mandatory for use in all judicial proceedings for expungement of records whether pursuant to Code, Criminal Procedure Article, ~~§§10-101~~ 10-102 through 10-109 or otherwise.

Cross reference: For expungement of criminal charges transferred to the juvenile court, see Rule 11-601 and Code, Criminal Procedure Article, §10-106.

Source: This Rule is derived from former Rule EX2.

REPORTER'S NOTE

Chapter 712, Laws of 2009 (HB 1227) changed the procedure for expungement of criminal charges transferred to juvenile court. The Rules Committee recommends modifying the statutory reference in the body of the Rule and adding a reference to the new statute to the cross reference at the end of the Rule.

MARYLAND RULES OF PROCEDURE  
TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES  
CHAPTER 100 - GENERAL PROVISIONS

ADD new Rule 6-153, as follows:

Rule 6-153. ADMISSION OF COPY OF EXECUTED WILL

An interested person, without notice to other interested persons, may file a petition for the admission of a copy of an executed will at any time before administrative or judicial probate if:

- (1) the original executed will is alleged to be lost or destroyed;
- (2) a duplicate reproduction of the original executed will, evidencing a copy of the original signatures of the decedent and the witnesses, is offered for admission; and
- (3) all the heirs at law and all legatees named in the will have executed a consent in the following form:

[CAPTION]

CONSENT TO PROBATE OF COPY OF EXECUTED  
LAST WILL AND TESTAMENT

The undersigned \_\_\_\_\_ and  
\_\_\_\_\_,  
being all the heirs at law of the decedent and all the legatees  
named in the will executed by the decedent on \_\_\_\_\_,

hereby consent to the probate of a copy of that executed will, it having been determined, after an extensive search of the decedent's personal records, that an original of the will cannot be located. By signing this consent each of the undersigned affirms that it is his or her belief that the will executed by the decedent on \_\_\_\_\_, is the last valid will executed by the decedent and was not revoked and that the copy of the will, as submitted with the petition for its admission, represents a true and correct copy of the will.

We affirm under the penalties of perjury that the facts set forth in this consent are true and correct to the best of our knowledge, information, and belief.

Date	Signature	Print Name and Relationship
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

REPORTER'S NOTE

Chapter 37, Acts of 2009 (SB 154) authorizes an interested person to file a petition for admission of a copy of an executed will to probate if the original executed will is alleged to be lost or destroyed, a duplicate reproduction of the original executed will is offered for admission, and all the heirs at law and legatees named in the offered will execute a consent. The Rules Committee recommends adding a new Rule addressing the new statute, including the consent form set out by the legislature.



MARYLAND RULES OF PROCEDURE  
 TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES  
 CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-402 by adding a cross reference, as follows:

Rule 6-402. FORM OF INVENTORY

Within three months after appointment, the personal representative shall file with the register (1) an inventory consisting of a summary and supporting schedules in the forms set forth in this Rule and (2) any required appraisal in conformity with Rule 6-403.

(a) Form of Summary

[CAPTION]

Date of Death \_\_\_\_\_

INVENTORY

Summary

Schedule	Type of Property	Appraised Value
A	Real _____	\$ _____
B	Leasehold _____	\$ _____
C	Tangible personal _____	\$ _____
D	Corporate stocks _____	\$ _____
E	Bonds, notes, mortgages, debts due to the decedent _____	\$ _____

F	Bank accounts, savings and loan accounts, cash _____	\$ _____
G	All other interests _____	\$ _____
	Total	\$ _____

I solemnly affirm under the penalties of perjury that the contents of the foregoing inventory are true to the best of my knowledge, information, and belief and that any property valued by me which I have authority as personal representative to appraise has been valued completely and correctly in accordance with law.

Date: \_\_\_\_\_

\_\_\_\_\_  
Personal Representative(s)

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

(b) Form of Supporting Schedules

Inventory of Estate of \_\_\_\_\_

Estate No. \_\_\_\_\_

SCHEDULE \_\_\_\_\_

Item No.	Description	Market Value
-------------	-------------	-----------------

Total \$ \_\_\_\_\_

Verification of appraiser other than personal representative,  
if not supplied separately:

I solemnly affirm under the penalties of perjury that I  
appraised the property listed on this schedule on the \_\_\_\_ day of  
\_\_\_\_\_, \_\_\_\_\_, and that the appraisal was  
(month) (year)  
done impartially and to the best of my skill and judgment.

\_\_\_\_\_  
Signature of Appraiser

\_\_\_\_\_  
Name and Address

Instructions:

Pursuant to Code, Estates and Trusts Article, §7-201,

1. Describe each item in reasonable detail, and indicate its  
appraised gross market value as of the date of death of the  
decedent.

2. If an item is encumbered, show the type and amount of any  
encumbrance in the description.

3. For real and leasehold property, give a description  
sufficient to identify the property and the title reference by  
liber and folio.

4. In listing tangible personal property it is not necessary to  
list wearing apparel other than furs and jewelry.

Cross reference: Code, Estates and Trusts Article, §7-201 and  
7-202.

REPORTER'S NOTE

Chapter 405, Acts of 2009 (HB 582) provides an alternate method for the valuation of real and leasehold property. To draw attention to this, the Rules Committee recommends adding a cross reference to the new law at the end of Rules 6-402 and 6-403.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-403 by adding a cross reference, as follows:

Rule 6-403. APPRAISAL

(a) Required Content

When an appraisal is required, the appraisal shall be prepared and executed by each appraiser named in the Inventory, other than the personal representative. The appraisal shall (1) describe briefly the appraiser's qualifications, (2) list in columnar form each item appraised and its market value as of the date of death of the decedent and (3) be verified substantially in the following form:

I solemnly affirm under the penalties of perjury that I appraised the property listed in this appraisal on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and that the appraisal was done impartially and to the best of my skill and judgment.

\_\_\_\_\_  
Appraiser

\_\_\_\_\_  
Address  
\_\_\_\_\_

(b) Basis of Appraisal

The basis of appraisal need not be set forth in the appraisal, but, upon request of the register or order of the court, the personal representative shall produce the basis for inspection by the register.

Cross reference: Code, Estates and Trusts Article, §§2-301 through 2-303, and §7-202 (a) and (b). For valuation other than at appraised fair market value under certain circumstances, see Code, Estates and Trusts Article, §7-202 (c).

REPORTER'S NOTE

See the Reporter's note to Rule 6-402.

MARYLAND RULES OF PROCEDURE  
TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES  
CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-405 by adding a cross reference, as follows:

Rule 6-405. APPLICATION TO FIX INHERITANCE TAX ON NON-PROBATE ASSETS

An application to fix inheritance taxes on non-probate assets shall be filed with the register within 90 days after decedent's death, together with any required appraisal in conformity with Rule 6-403. The application shall be in the following form:

BEFORE THE REGISTER OF WILLS FOR \_\_\_\_\_, MARYLAND

In the matter of: File No. \_\_\_\_\_  
\_\_\_\_\_, Deceased

APPLICATION TO FIX INHERITANCE TAX  
ON NON-PROBATE ASSETS

The applicant represents that:

1. The decedent, a resident of \_\_\_\_\_,  
(county)  
died on \_\_\_\_\_,  
(month) (day) (year).

2. The non-probate property subject to the inheritance tax in which the decedent and the recipient had interests, the nature of each interest (such as joint tenant, life tenant, remainderman of life estate, trustee, beneficiary, transferee), and the market

value of the property at the date of death are:

PROPERTY	NATURE OF INTERESTS	DATE AND TYPE OF INSTRUMENT	MARKET VALUE
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

3. The name and address of the recipient of the property and the relationship to the decedent are: \_\_\_\_\_

\_\_\_\_\_.

4. Any liens, encumbrances, or expenses payable from the above property and their amounts are:

\_\_\_\_\_ \$ \_\_\_\_\_  
\_\_\_\_\_ \$ \_\_\_\_\_  
\_\_\_\_\_ \$ \_\_\_\_\_

5. Attached is a statement of the basis for valuation or, if required by law, an appraisal.

6. All other information necessary to fix inheritance tax is as follows: [ ] tax is payable from residuary estate pursuant to decedent's will; [ ] OTHER (describe): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The applicant requests the Register of Wills to fix the amount of inheritance tax due.

I solemnly affirm under the penalties of perjury that the



contents of the foregoing application are true to the best of my knowledge, information, and belief.

Date: \_\_\_\_\_  
Applicant

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

-----  
(FOR APPLICANT'S USE - OPTIONAL)

Value of property as above ..... \$ \_\_\_\_\_  
Less: Liens, encumbrances, and expenses as above .. \$ \_\_\_\_\_  
Amount taxable ..... \$ \_\_\_\_\_  
Direct Inheritance Tax due at \_\_\_\_% ..... \$ \_\_\_\_\_  
Collateral Inheritance Tax due at \_\_\_\_% ..... \$ \_\_\_\_\_  
Total tax due ..... \$ \_\_\_\_\_

Cross reference: Code, Tax-General Article, §§7-208 and 7-225 and  
Code, Estates and Trusts Article, §7-202.

REPORTER'S NOTE

An Assistant Attorney General pointed out that Code, Tax General Article, §7-225 pertains to appraisals of non-probate property for the purpose of determining inheritance tax. The trustees of this type of property have the responsibility to have the property appraised. The statute incorporates by reference procedures in the Estates and Trusts Article related to appraisals. Since there are no valuation procedures set out for

trustees, a cross reference to Code, Estates and Trusts Article, §7-202, which pertains to valuation of real and leasehold property, is proposed to be added at the end of Rule 6-405.

MARYLAND RULES OF PROCEDURE

TITLE 6 - SETTLEMENT OF DECEDENTS' ESTATES

CHAPTER 400 - ADMINISTRATION OF ESTATES

AMEND Rule 6-416 (b) to modify the "Consent to Compensation for Personal Representative and/or Attorney" form, as follows:

Rule 6-416. ATTORNEY'S FEES OR PERSONAL REPRESENTATIVE'S COMMISSIONS

(a) Subject to Court Approval

(1) Contents of Petition

When a petition for the allowance of attorney's fees or personal representative's commissions is required, it shall be verified and shall state: (A) the amount of all fees or commissions previously allowed, (B) the amount of fees or commissions that the petitioner reasonably anticipates will be requested in the future, (C) the amount of fees or commissions currently requested, (D) the basis for the current request in reasonable detail, and (E) that the notice required by subsection (a)(3) of this Rule has been given.

(2) Filing - Separate or Joint Petitions

Petitions for attorney's fees and personal representative's commissions shall be filed with the court and may be filed as separate or joint petitions.

(3) Notice

The personal representative shall serve on each unpaid

creditor who has filed a claim and on each interested person a copy of the petition accompanied by a notice in the following form:

NOTICE OF PETITION FOR ATTORNEY'S FEES OR PERSONAL  
REPRESENTATIVE'S COMMISSIONS

You are hereby notified that a petition for allowance of attorney's fees or personal representative's commissions has been filed.

You have 20 days after service of the petition within which to file written exceptions and to request a hearing.

(4) Allowance by Court

Upon the filing of a petition, the court, by order, shall allow attorney's fees or personal representative's commissions as it considers appropriate, subject to any exceptions.

(5) Exception

An exception shall be filed with the court within 20 days after service of the petition and notice and shall include the grounds therefor in reasonable detail. A copy of the exception shall be served on the personal representative.

(6) Disposition

If timely exceptions are not filed, the order of the court allowing the attorney's fees or personal representative's commissions becomes final. Upon the filing of timely exceptions, the court shall set the matter for hearing and notify the personal

representative and other persons that the court deems appropriate of the date, time, place, and purpose of the hearing. (b)

Consent in Lieu of Court Approval

(1) Conditions for Payment

Payment of attorney's fees and personal representative's commissions may be made without court approval if:

(A) the combined sum of all payments of attorney's fees and personal representative's commissions does not exceed the amounts provided in Code, Estates and Trusts Article, §7-601; and

(B) a written consent stating the amounts of the payments signed by (i) each creditor who has filed a claim that is still open and (ii) all interested persons, is filed with the register in the following form:

BEFORE THE REGISTER OF WILLS FOR \_\_\_\_\_, MARYLAND  
IN THE ESTATE OF:

\_\_\_\_\_ Estate No. \_\_\_\_\_

CONSENT TO COMPENSATION FOR

PERSONAL REPRESENTATIVE AND/OR ATTORNEY

~~I consent to the following payments of compensation to the personal representative and/or attorney and acknowledge that, if consented to by all unpaid creditors who have filed claims and all interested persons, these payments will not be subject to review or approval by the Court. I also understand that the total compensation does not exceed the amounts provided~~

~~in Estates and Trusts Article, §7-601 which are 9% of the first \$20,000 of the gross estate plus 3.6% of the excess over \$20,000.~~

I understand that the law, Estates and Trusts Article, §7-601, provides a formula to establish the maximum total compensation to be paid for Personal Representative's Commissions and/or Attorney's Fees without order of court. If the total compensation being requested falls within the maximum allowable amount, and the request is consented to by all unpaid creditors who have filed claims and all interested persons, then this payment need not be subject to review or approval by the Court. A creditor or an interested party may, but is not required to, consent to these fees.

The formula sets total compensation at 9% of the first \$20,000 of the gross estate PLUS 3.6% of the excess over \$20,000.

Based on this formula, the total allowable statutory maximum based on the gross estate known at this time = \_\_\_\_\_, LESS any Personal Representative's Commissions and/or Attorney's Fees previously paid. To date, \$ \_\_\_\_\_ in Personal Representative's Commissions and \$ \_\_\_\_\_ in Attorney's Fees have been paid.

Total combined fees being requested are \$ \_\_\_\_\_, to be paid as follows:

<u>Amount</u>	<u>To</u>	<u>Name of Personal Representative/Attorney</u>
_____	_____	_____

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

~~Consented to by:~~ I have read this entire form and I hereby  
consent to the payment of Personal Representative and/or  
Attorney's Fees in the above amount.

Date	Signature	Name (Typed or Printed)
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Personal Representative

\_\_\_\_\_  
Address

\_\_\_\_\_  
Personal Representative

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

(2) Designation of Payment

When rendering an account pursuant to Rule 6-417 or a final report under modified administration pursuant to Rule 6-455, the personal representative shall designate any payment made under this section as an expense.

Cross reference: Code, Estates and Trusts Article, §§7-502, 7-601, 7-602 and 7-604.

REPORTER'S NOTE

The Conference of Orphans' Court Judges has suggested that the form in Rule 6-416 entitled "Consent to Compensation for Personal Representative and/or Attorney" be modified to ensure that lay persons who sign the form are giving informed consent. The Rules Committee recommends an amendment to the form, which has been developed with the assistance of the Conference, representatives of the Registers of Wills, and members of the Bar.



MARYLAND RULES OF PROCEDURE  
TITLE 13 - RECEIVERS AND ASSIGNEES  
CHAPTER 700 - REMOVAL AND RESIGNATION

AMEND Rule 13-702 to correct an internal reference, as follows:

Rule 13-702. RESIGNATION OF RECEIVER OR ASSIGNEE

. . .

(b) Report to be Filed

The receiver or assignee shall file with the petition a report pursuant to Rule ~~13-601~~ 13-501 for any period not covered in an annual report previously filed or, if no annual report has been filed, from the date the receiver or assignee took charge of the estate.

. . .

REPORTER'S NOTE

The proposed amendment to Rule 13-702 corrects an internal reference in section (b) of the Rule.

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

AMEND Rule 16-824 by changing the word "may" to the word "shall" in the Committee note after section (b), as follows:

Rule 16-824. RESTRICTIONS

(a) Judge's Own Ceremony

A judge may not perform his or her own marriage ceremony.

(b) Compensation

A judge may receive no compensation, remuneration, or gift for performing a marriage ceremony.

Committee note: See Code, Family Law Article, §2-410, as to the fees a clerk or deputy clerk ~~may~~ shall collect for performing a marriage ceremony.

(c) Advertising or Other Solicitations

A judge may not give or offer to give any reward to any person as an inducement to have the judge perform a marriage ceremony. A judge may not advertise or otherwise solicit individuals contemplating marriage to choose the judge to perform the ceremony.

Source: This Rule is new.

REPORTER'S NOTE

The Rules Committee believes that the Committee note after section (b) incorrectly implies that clerks have the option of collecting fees for performing marriages. Since clerks must collect these fees by law, the Committee recommends changing the word "may" to the word "shall."

MARYLAND RULES OF PROCEDURE  
TITLE 16 - COURTS, JUDGES, AND ATTORNEYS  
CHAPTER 1000 - ACCESS TO COURT RECORDS

AMEND Rule 16-1006 (b) to add to subsection (b) (1) a reference to a certified nurse practitioner, to substitute the words "becomes effective" for the words "is issued" in subsection (b) (2), to add a cross reference following section (b), and to add a new section (c) referring to certain records pertaining to petitions for relief from abuse, as follows:

Rule 16-1006. REQUIRED DENIAL OF INSPECTION - CERTAIN CATEGORIES OF CASE RECORDS

Except as otherwise provided by law, court order, or the Rules in this Chapter, the custodian shall deny inspection of:

. . .

(b) The following case records pertaining to a marriage license:

(1) A ~~physician's~~ certificate of a physician or certified nurse practitioner filed pursuant to Code, Family Law Article, §2-301, attesting to the pregnancy of a child under 18 years of age who has applied for a marriage license.

(2) Until a license ~~is issued~~ becomes effective, the fact that an application for a license has been made, except to the parent or guardian of a party to be married.

Cross reference: See Code, Family Law Article, §2-402 (f).

(c) Case records pertaining to petitions for relief from abuse filed pursuant to Code, Family Law Article, §4-504, which shall be sealed until the earlier of 48 hours after the petition is filed or the court acts on the petition.

~~(c)~~ (d) . . .

~~(d)~~ (e) . . .

~~(e)~~ (f) . . .

~~(f)~~ (g) . . .

~~(g)~~ (h) . . .

~~(h)~~ (i) . . .

~~(i)~~ (j) . . .

~~(j)~~ (k) . . .

~~(k)~~ (l) . . .

REPORTER'S NOTE

Chapter 233, Laws of 2009 (HB 1140) allows certified nurse practitioners as well as physicians to determine whether a 15, 16, or 17-year-old minor who wishes to be married is pregnant or has given birth to a child. A proposed amendment to Rule 16-1006 (b)(1) adds a reference to a "certified nurse practitioner" as being authorized to attest to a current pregnancy of the minor or a pregnancy that resulted in the minor giving birth to a child.

Subsection (b)(2) of Rule 16-1006 currently provides that the information about the application for a marriage license cannot be disclosed until a license is issued, except to a parent or guardian of a party to be married. The Rules Committee observed that Code, Family Law Article, §2-402 (f) provides that the information may not be disclosed until a marriage license becomes effective. A license may be issued immediately upon the filing of the application, but it does not become effective until two days later. Thus, the Rule and the statute are in conflict, since the Rule may allow disclosure of the fact that there has been an

application for a marriage license as soon as the application is filed. The Committee recommends amending subsection (b)(2) to conform to the language of the statute.

The Committee also recommends that case records pertaining to petitions for relief from abuse filed pursuant to Code, Family Law Article, §4-504 be added to the list of sealed case records in Rule 16-1006. The concern is that once the petition is filed, the alleged abuser may cause some harm before a judge can issue a protective order. The addition to the Rule would delay the disclosure to the alleged abuser.