

Hearing Fundamentals

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UNC
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Road Map



- ❖ The Basics
 - Magistrate's role
 - Setting the ground rules
 - Maintaining decorum
- ❖ The Goals
 - Opportunity to be heard/decisions on the merits
 - Presentation and order of evidence

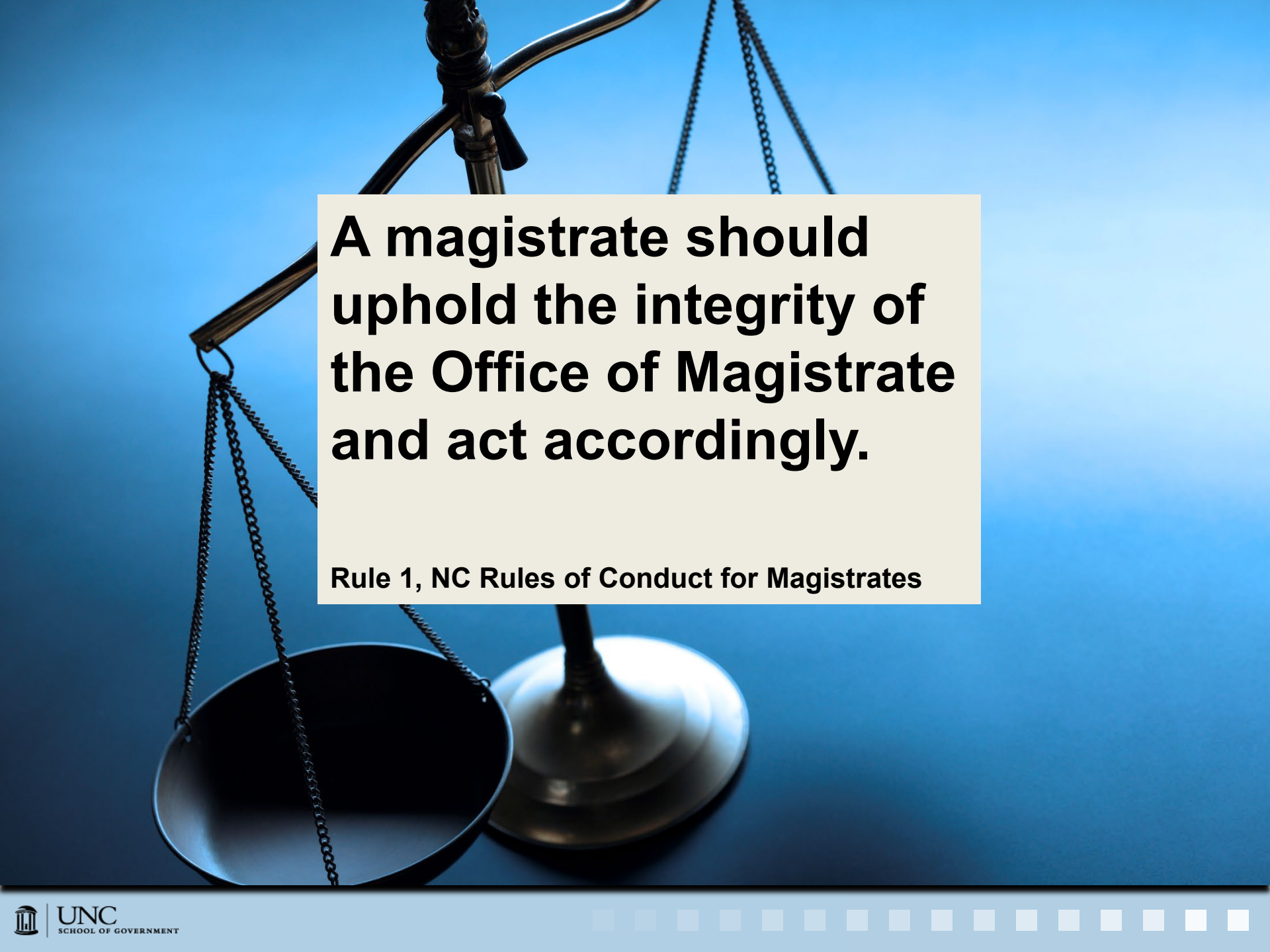
Courtroom Observations



The Basics

- Magistrate's role
- Setting the ground rules
- Maintaining decorum





A magistrate should uphold the integrity of the Office of Magistrate and act accordingly.

Rule 1, NC Rules of Conduct for Magistrates

Order in the Court!



- ❖ A magistrate should perform the duties of the magistrate's office impartially and diligently.
- ❖ B.(3) A magistrate should be patient, dignified and courteous to applicants, litigants, witnesses, lawyers, law enforcement officers, and others with whom the magistrate deals in the magistrate's official capacity and should require similar conduct of the persons involved in the proceedings.

Rule 3, NC Rules of Conduct for Magistrates

Put on your robes?



For a Level Playing Field



SET
GROUND
RULES

Introductions



Introduce yourself and state your title.



Plain Language Script: “I am Magistrate
_____. I will be presiding over your case
today.”

Identifying the claims and parties



State the **Nature of Hearing** and identify the parties before you.



Plain Language Script: “We are here today in the matter of _____ v. _____ on the claims(s) of _____. Plaintiff _____ is requesting an order for _____ and will need to provide evidence to prove the issues raised in his/her complaint. Is [plaintiff] here? Is [defendant] here?”

Order of Hearing



Explain the **Order of Hearing**.



Plain Language Script: “First I will hear what Mr./Ms. _____ (Plaintiff) would like for me to know about the case and then I will listen to what Mr./Ms. _____ (Defendant) would like for me to know about the case.”

Rules of Decorum



State the **Rules of Decorum**.



Plain Language Script: “Do not interrupt while the other party is speaking or presenting evidence. Wait until the person asking the question finishes before answering. And wait until the person answering the question finishes before asking the next question.”

Courtroom Decorum

In court, North Carolina lawyers are “at all times to conduct themselves with dignity and propriety.”



Gen. R. Prac. 12

Demeanor toward the Court

- Should address the court from a standing position behind counsel table (except objections).
- Should not approach the bench except with the court's permission or request.
- Should not address matters directly to opposing counsel during the proceedings.
- Should “yield gracefully” to the court's rulings.

Duty of Candor

- Candor and fairness
- No knowing misinterpretations
- No false statements/evidence
- Disclose controlling legal authority



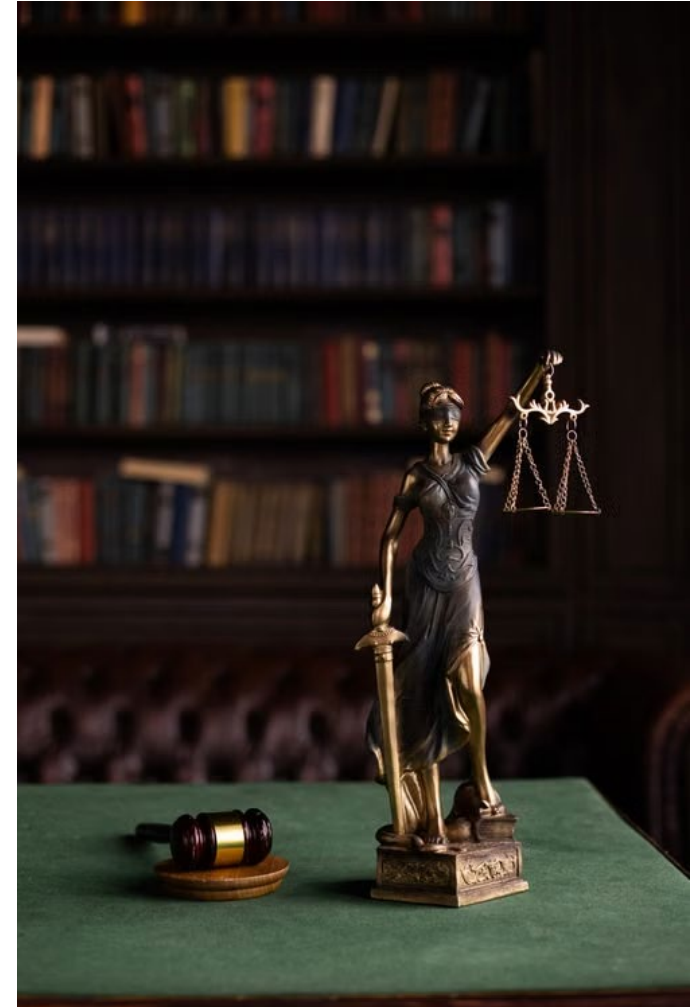
Gen. R. Prac. 12, NCRPC 3.3

Demeanor toward Witnesses

- Should examine witnesses from a seated position behind counsel table.
- Should not approach witnesses except to present, inquire about, or examine a document.
- Should treat adverse witnesses with fairness and due consideration.

Evidence Rule 611 & Control

- Make interrogation and presentation effective for the ascertainment of truth
- Avoid needless consumption of time
- Protect witnesses from harassment or undue embarrassment



The Goals

- Opportunity to be heard/decisions on the merits
- Presentation and order of evidence



Hearing Goals

- Opportunity to be Heard
- Decisions on the Merits

Ensuring their Day in Court

A magistrate should accord to every person who is legally interested in a proceeding, including any person or such person's lawyer, or any entity, including the State, the full right to be heard according to law.

NC Rules of Conduct for Magistrates, Rule 3B.(4)

Hearing from Everyone

Except as authorized by law, the magistrate should neither knowingly initiate nor knowingly consider ex parte or other communications concerning the matters involved in a pending proceeding. A magistrate, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before the magistrate.

NC Rules of Conduct for Magistrates Rule 3B.(5)

Hearing Goals

- Opportunity to be Heard
- Decisions on the Merits

“On the Merits”

- A decision “on the merits” comes from the law as it applies to the particular evidence and facts presented in a case.
- A hearing should help you be able to reach a decision based on the neutral application of the law to the facts of the case

As Magistrate...

1. You determine the legal rule and its elements
2. You explain the process to the parties
3. You question the parties to get the information you need
4. You apply the law to the facts of the case

Judicial Decision-Making

- *Judicial independence* assures that cases will be decided *on their merits*.
- Decisions are based on the neutral application of the law to the facts of the case
- In order to do this, you *need* all the necessary information!

What information could you need?

- What relief is a party asking for?
- What is the statutory authority?
- What legal arguments are the parties making?
- What is the evidence?

Burden of Proof

- The obligation to establish (“prove”)—with competent evidence—the issues brought before the court.
- Plaintiff bears the burden of proof regarding the matters raised in the complaint.
- In small claims, the burden is almost always by a preponderance of the evidence.



General Order of Evidence

1. Plaintiff's Evidence
2. Defendant's Evidence, if plaintiff makes a prima facie case or has a counterclaim

General Order of Examination

Represented Parties

- Witness takes “stand”
- Direct examination
- Cross-examination by opposing counsel
- Redirect examination
- Re-cross examination by opposing counsel (rare)

Parties Unrepresented

- Witness takes “stand”
- Witness testifies
 - Magistrate often asks questions
- Opposing party/ies may cross-examine
- Witness may give clarifying testimony
- Opposing party/ies may re-cross (rare)

Direct Examination

The initial questioning (examination) of a witness, by the party on whose behalf the witness is called.



Cross Examination

Questioning (examination) of a witness who has already testified in order to check or challenge the witness's testimony, knowledge, or credibility.



Objections

When a party/attorney calls to the court's attention that the other side's evidence is improper or in violation of the Rules of Evidence.

- *“Objection, hearsay.”*
- *“Your honor, objection. That’s not relevant.”*
- *“I object. Attorney Smith is asking me the same thing over and over.”*

Responding to Objections

3 General Options:

1. **Sustain the objection:** The magistrate agrees with the objection and stops the evidence from continuing (or notes that the magistrate will not consider the evidence).
2. **Overrule the objection:** The magistrate disagrees with the objection (thinks the evidence is proper) and allows the evidence to continue.
3. **Take the matter under consideration:** The magistrate allows the evidence to continue for now. The magistrate notes the objection and will decide later whether to consider that evidence when making a decision. (This can be a good option for the magistrate because there's no jury to shield from hearing the information.)

The End of the Road

- Set the tone for how you want your hearings to go.
- Remember the goal is to get the information that you need to render judgment.

