ETHICS

North Carolina Rules of Conduct for Magistrates

With Commentary

Preamble

An independent and honorable judicial system is indispensable to justice in our society, and to this end and in furtherance thereof, these Rules of Conduct for Magistrates are hereby established. A violation of these Rules of Conduct may be deemed conduct prejudicial to the administration of justice that brings the Office of Magistrate into disrepute, or willful misconduct in office, or otherwise as grounds for removal proceedings pursuant to Article 16 of Chapter 7A of the General Statutes of North Carolina.

Rule 1

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

A magistrate should act to establish, maintain, and preserve the integrity of the office and should personally observe appropriate standards of conduct to ensure that the integrity of the office is protected and preserved.

Commentary

[1] Conduct that compromises the integrity and impartiality of a magistrate undermines public confidence in the judicial system.

[2] The Supreme Court of North Carolina has described "conduct prejudicial to the administration of justice that brings the judicial office into disrepute" in the following way:

> Conduct prejudicial to the administration of justice that brings the judicial office into disrepute has been defined as "conduct which a judge undertakes in good faith but which nevertheless would appear to an objective observer to be not only unjudicial conduct but conduct prejudicial to public esteem for the judicial office."

In re Edens, 290 N.C. 299, 226 S.E.2d 5 (1976) (quoting *Geiler v. Comm'n on Jud'l Qualifications*, 10 Cal.3d 270, 110 Cal. Rptr. 201, 515 P.2d 1 (1973), *cert. denied*, 417 U.S. 932, 94 S.Ct. 2643, 41 L.Ed.2d 235 (1974)). *See also In re Inquiry Concerning a Judge (Brown)*, 358 N.C. 711, 599 S.E.2d 502 (2004).

[3] Magistrates should support professionalism within their sphere, including the professionalism of law enforcement agencies and legal professionals, and promote equal access to justice for all.

[4] Treating all persons with respect is critical to the judicial functions of the Office of Magistrate. A magistrate should conduct himself or herself with proper restraint and decorum that extends to all applicants, litigants, or others with whom the magistrate comes into contact. *See In re Inquiry Concerning a Judge (LaBarre)*, 369 N.C. 538, 798 S.E.2d 736 (2017) (censuring a judge for driving while impaired and for becoming belligerent and directing vulgar language and expletives towards police officers and other emergency responders after he was asked to submit to a second breath test); *In re Inquiry Concerning a Judge (Daisy)*, 359 N.C. 622, 614 S.E.2d 529 (2005) (censuring a judge for hugging, touching, and otherwise subjecting a judicial assistant and a paralegal to unwanted, uninvited, and inappropriate physical

contact). This does not mean, however, that any and all breaches of decorum necessarily provide a basis for discipline. *See In re Inquiry Concerning a Judge (Bullock)*, 324 N.C. 320, 377 S.E.2d 743 (1989) (refusing to censure a judge who, believing that a law enforcement officer had publicly expressed a desire to slap him, called the officer into the judge's chambers, told the officer, "If you want to slap me, there is no better time to do it than right now," and physically escorted the officer out of the judge's chambers).

Rule 2

A magistrate should avoid impropriety in all the magistrate's activities.

A. A magistrate should respect and comply with the law and should conduct himself or herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judicial system.

B. A magistrate shall notify the Chief District Court Judge within three (3) days of learning:

(1) that the magistrate himself or herself has been charged with any non-traffic misdemeanor or felony or driving while impaired; or

(2) that an immediate family member, as defined in N.C. Gen. Stat. § 138A-3(40), or other person living in the same household as the magistrate has been charged with any non-traffic misdemeanor or felony or driving while impaired.

C. A magistrate should not allow the magistrate's family, social, or other relationships to influence the magistrate's conduct or judgment. The magistrate should not lend the prestige of the magistrate's office to advance the private interest of others except as expressly permitted by these Rules, nor should the magistrate convey or permit others to convey the impression that they are in a special position to influence the magistrate.

D. A magistrate should not hold membership in any organization that practices unlawful discrimination.

Commentary

[1] It is imperative that magistrates avoid actual improprieties, which include violations of law, court rules, or orders.

[2] Respect for and compliance with the law is required, not only in adjudicative circumstances but in all circumstances. *See In re Inquiry Concerning a Judge (LaBarre)*, 369 N.C. 538, 798 S.E.2d 736 (2017) (censuring a judge for driving while impaired and for becoming belligerent and directing vulgar language and expletives towards police officers and other emergency responders after he was asked to submit to a second breath test).

[3] A magistrate "is an officer of the district court." N.C. Gen. Stat. § 7A-170.

[4] A magistrate must not use the prestige of office to advance the magistrate's personal or family interests. Likewise, it is improper for a magistrate to use or attempt to use his or her position to gain personal advantage or preferential treatment of any kind. For example, it would be improper for a magistrate to

allude to his or her official status to gain favorable treatment in encounters with others. Similarly, a magistrate must not use official letterhead to gain an advantage in conducting personal business.

[5] A magistrate may provide a reference or recommendation for an individual with whom the magistrate has worked. The magistrate may use official letterhead for such reference or recommendation.

[6] A magistrate should not allow personal or family relationships to impair his or her ability to remain fair and impartial and to uphold the principles of these Rules. Also, a magistrate should not make comments or take actions that call the magistrate's impartiality or fairness into question. *See In re Inquiry Concerning a Judge (Hair)*, 335 N.C. 150, 436 S.E.2d 128 (1993) (censuring a judge for threatening an assistant district attorney, an SBI agent, and an attorney in private practice with professional reprisals for their perceived disloyalty to the judge in the judge's divorce case).

[7] A magistrate should not engage in conduct or speech that would subject a litigant, attorney, or other person appearing before the magistrate to unwarranted ridicule. *See In re Inquiry Concerning A Judge (Hill)*, 357 N.C. 559, 591 S.E.2d 859 (2003) (censuring a judge for (1) making unwarranted critical comments to an attorney, accusing the attorney of being heartless, and calling the attorney incompetent; and (2) attempting to grab a deputy sheriff's genitals after she ordered him to get out of her way as she entered the clerk of court's office).

[8] A magistrate's public manifestation of approval of unlawful discrimination on any basis diminishes public confidence in the integrity and impartiality of the judiciary. Accordingly, when a magistrate learns that an organization to which the magistrate belongs engages in unlawful discrimination, the magistrate must resign immediately from the organization.

Rule 3

A magistrate should perform the duties of the magistrate's office impartially and diligently.

A. Magistrate Duties in General. The official duties of a magistrate take precedence over all the magistrate's other activities. The magistrate's duties include all the duties of the office prescribed by law, including local Rules of Court, and those duties assigned by the Chief District Court Judge or Chief Magistrate, if the Chief District Court Judge has designated a Chief Magistrate. In the performance of these duties, the following standards apply.

B. Adjudicative responsibilities.

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

(2) A magistrate should be unswayed by partisan interests, public clamor, or fear of criticism.

(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.

(4) 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.

(5) 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.

(6) A magistrate should dispose promptly of the business of the court.

(7) A magistrate should abstain from public comment about the merits of a pending proceeding in any state or federal court dealing with a case or controversy arising in North Carolina or addressing North Carolina law. This subsection does not prohibit a magistrate from making public statements in the course of official duties; from explaining for public information the procedures of the Court or magistrate's office consistent with these Rules; from addressing or discussing previously issued judicial decisions when serving as faculty or otherwise participating in educational courses or programs; or from addressing educational, religious, charitable, fraternal, political, or civic organizations.

(a) Notwithstanding the foregoing, a magistrate shall not be prohibited from commenting on proceedings in which the magistrate is a litigant in any capacity.

C. Administrative responsibilities.

(1) A magistrate should

(a) diligently discharge the magistrate's administrative responsibilities; and

(b) maintain professional competence in:

(i) judicial administration,

(ii) the software and other technology adopted for the magistrate's use, and

(iii) the procedures established by the Courts and supervisory officials or officers with authority to do so.

(2) A magistrate shall comply with scheduling directives issued by the Chief District Court Judge or, where applicable, the Chief Magistrate. A magistrate shall be present and serve for the periods of time necessary to provide the services to the public and advance the interests of justice.

(3) A magistrate shall promptly transfer documents and monies to the Clerk's office, as well as other requisite documents and materials to law enforcement agencies, the District Attorney, or other agencies as required by law. Particularly with respect to monies, the magistrate must follow the directives promulgated by the North Carolina Administrative Office of the Courts.

D. Educational Duties and Responsibilities. To obtain and maintain the competence necessary for the Office of Magistrate, all magistrates must be appropriately instructed and have a requisite level of knowledge of the law.

(1) Failure to attend courses of educational instruction as required by law without good cause may constitute conduct prejudicial to the administration of justice that brings the judicial office into disrepute or willful misconduct in office.

E. Duty to Disqualify or Recuse

(1) On motion of any party, a magistrate should disqualify himself or herself from a proceeding in which the magistrate's impartiality may reasonably be questioned, including but not limited to instances where:

(a) The magistrate has a personal bias or prejudice concerning a party;

(b) The magistrate has personal knowledge of disputed evidentiary facts concerning the proceedings;

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

(d) the magistrate knows that he/she, individually or as a fiduciary, or the magistrate's spouse or minor child residing in the magistrate's household, has a financial interest in the subject matter in controversy or is a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(e) The magistrate or the magistrate's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

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

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

(iii) is known by the magistrate to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) is to the magistrate's knowledge likely to be a material witness in the proceeding.

(2) A magistrate must act to inform himself or herself about the magistrate's personal and fiduciary financial interests and must make a reasonable effort to inform himself or herself about the personal financial interests of the magistrate's spouse and minor children residing in the magistrate's household.

(3) For the purposes of this section:

(a) The degree of relationship is calculated according to the civil law system;

(b) "Fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(c) "Financial interest" means ownership of a substantial legal or equitable interest (i.e., an interest that would be significantly affected in value by the outcome of the subject legal proceeding), or a relationship as director or other active participant in the affairs of a party, except that:

(i) ownership in a mutual or common investment fund that holds securities is not a substantial "financial interest" in such securities unless the magistrate participates in the management of the fund;

(ii) an office in an educational, cultural, historical, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization.

(4) Without the interposition of a motion for disqualification or recusal, a magistrate may disqualify himself or herself from participating in any proceeding upon the magistrate's own initiative where the magistrate concludes that his or her judgment in the matter may reasonably be called into question or may lead to the disrepute of the proceeding. Also, a magistrate potentially disqualified by the terms of this Rule may, instead of withdrawing from the proceeding, disclose on the record the basis of the magistrate's potential disqualification. If, based on such disclosure, the parties or lawyers, on behalf of their clients and independently of the magistrate's participation, all agree in writing that the magistrate's basis for potential disqualification is immaterial or insubstantial, the magistrate is no longer disqualified, and may participate in the proceeding. The agreement, signed by all lawyers, shall be incorporated in the record of the proceeding. For purposes of this section, pro se parties shall be considered lawyers.

Commentary

[1] To ensure that magistrates are available to fulfill their official duties, magistrates must conduct their personal and extrajudicial activities in a manner so as to minimize the risk of conflicts that could disqualify them from performing their official duties.

[2] 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. The failure to do so prejudices the administration of justice. *See In re Edens*, 290 N.C. 299, 226 S.E.2d 5 (1976) (censuring a judge for disposing of a criminal case outside the courtroom when court was not in session and without notice to or input from the assistant district attorney who was prosecuting the docket).

[3] Ordinarily, to the extent reasonably possible, all parties or their lawyers shall be included in communications with a judicial official except when a differing procedure is prescribed under the law. Avoiding ex parte communications protects the fairness of the proceeding and the perception of a just and equal system of justice. It is particularly important in regard to civil matters over which the magistrate may be called to serve as an Officer of the District Court adjudicating the matter.

[4] The Rule allows a magistrate to initiate, permit, or consider ex parte communications only when authorized to do so by law. *See, e.g.*, N.C. Gen. Stat. § 1A-1, Rule 65(b)(ii) (contemplating application for restraining order without notice to other party or counsel and requiring that "the applicant's attorney certifies to the court in writing the efforts, if any, that have been made to give the notice and the reasons supporting the claim that notice should not be required"). Communications with magistrates may be ex parte, when, for example, a law enforcement officer or a complaining witness applies to a magistrate for the issuance of a warrant or of criminal process. In the civil context, a magistrate may be authorized to conduct an ex parte hearing, for instance, on an application for a domestic violence restraining order.

[5] A magistrate's conduct should be consistent with that expected of an impartial member of the judiciary. Consequently, a magistrate should not attempt to direct the conduct of criminal investigations, charging decisions, or defense of cases. *Cf.*, *In re Inquiry Concerning a Judge (Bullock)*, 328 N.C. 712, 403 S.E.2d 264, (1991) (censuring a judge for briefly confining an attorney to the jury room and threatening to issue rulings unfavorable to the attorney or the attorney's clients in future cases after the attorney refused to explain the reasons for his motion to withdraw as counsel and his refusal to make a recommendation concerning his client's participation in a first offender's program).

[6] Magistrates must efficiently dispose of the matters assigned to them and be available to decide the matters that come before the court. Although there are times when disqualification is necessary to protect the rights of litigants and preserve public confidence in the independence, integrity, and impartiality of the judiciary, unwarranted disqualification can bring public disfavor to the court and to the magistrate personally. The dignity of the court, the magistrate's respect for fulfillment of official duties, and a proper concern for the burdens that may be imposed upon the court and the magistrate's colleagues require that a magistrate not fail to appear for assigned duties or use disqualification to avoid cases.

[7] The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the magistrate is affiliated does not, by itself, disqualify the magistrate.

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

Rule 4

A magistrate may participate in cultural or historical activities or engage in activities concerning the legal, economic, educational, or governmental system, or the administration of justice.

A. A magistrate, subject to the proper performance of the magistrate's judicial duties, may engage in the following quasi-judicial activities, if in doing so the magistrate does not cast substantial doubt on the magistrate's capacity to decide impartially any issue that may come before the magistrate.

(1) A magistrate may speak, write, lecture, teach, participate in cultural or historical activities, or otherwise engage in activities concerning the economic, educational, legal, or governmental system, or the administration of justice.

(2) A magistrate may appear at a public hearing before an executive or legislative body or official with respect to activities permitted under other provisions of these Rules, and the magistrate may otherwise consult with an executive or legislative body or official.

(3) A magistrate may serve as a member, officer, or director of an organization or governmental agency concerning the activities described in this Rule and may participate in its management and investment decisions.

(a) If a magistrate participates in raising funds for such an organization, the magistrate must take care to avoid giving the impression that he or she is acting in an official capacity.

(b) A magistrate may make recommendations to public and private fund-granting agencies regarding activities or projects undertaken by such an organization.

Commentary

[1] Arguably the activities covered by this Rule are better described as "extra-judicial" than as "quasi-judicial." This Rule labels them "quasi-judicial," however, because that term is used in the Code of Judicial Conduct's parallel provision. The North Carolina Code of Judicial Conduct, Canon 4, (Nov. 6, 2015).

Rule 5

A magistrate should regulate the magistrate's extra-judicial activities to ensure that they do not prevent the magistrate from carrying out the magistrate's official duties.

A. Avocational activities. A magistrate may write, lecture, teach, and speak on legal or non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not substantially interfere with the performance of the magistrate's judicial duties.

B. Civic and charitable activities. A magistrate may participate in civic and charitable activities that do not reflect adversely upon the magistrate's impartiality or interfere with the performance of the magistrate's duties. A magistrate may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization subject to the following limitations.

(1) A magistrate should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the magistrate.

(2) A magistrate may be listed as an officer, director, or trustee of any cultural, educational, historical, religious, charitable, fraternal, or civic organization. If a magistrate participates in raising funds for the organization, the magistrate must take care to avoid giving the impression that he or she is acting in an official capacity.

(3) A magistrate may serve on the board of directors or board of trustees of such an organization even though the board has the responsibility for approving investment decisions.

C. Financial activities.

(1) A magistrate should refrain from financial and business dealings that reflect adversely on the magistrate's impartiality, interfere with the proper performance of the magistrate's judicial duties, exploit the magistrate's judicial position, or involve the magistrate in frequent substantial transactions with lawyers or persons likely to come before the court on which the magistrate serves.

(2) Subject to the requirements of Rule 5.C(1), a magistrate may hold and manage the magistrate's own personal investments or those of the magistrate's spouse, children, or parents, including real estate investments, and may engage in other remunerative activity not otherwise inconsistent with the provisions of these Rules.

(3) A magistrate should manage his or her investments and other financial interests to minimize the number of cases in which the magistrate is disqualified.

(4) Neither a magistrate nor a member of the magistrate's family residing in the magistrate's household should accept a gift from anyone except as follows:

(a) A magistrate may accept a gift incident to a public testimonial to the magistrate; books supplied by publishers on a complimentary basis for official or academic use; or an invitation to the magistrate and the magistrate's spouse to attend a bar-related function, a cultural or historical activity, or an event related to the economic, educational, legal, or governmental system, or the administration of justice;

(b) A magistrate or a member of the magistrate's family residing in the magistrate's household may accept ordinary social hospitality; a gift, favor, or loan from a friend or relative; a wedding, engagement, or other special occasion gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not magistrates; or a scholarship or fellowship awarded on the same terms applied to other applicants; or

(c) Other than as permitted under this Rule, a magistrate or a member of the magistrate's family residing in the magistrate's household may accept any other gift only if the donor is not a party presently before the magistrate.

(5) For the purposes of this section "member of the magistrate's family residing in the magistrate's household" means any relative of a magistrate by blood or marriage, or a person treated by a magistrate as a member of the magistrate's family, who resides in the magistrate's household.

(6) Information acquired by a magistrate in the magistrate's judicial capacity must not be used or disclosed by the magistrate in financial dealings or for any other purpose not related to the magistrate's judicial duties.

D. Fiduciary activities. A magistrate should not serve as the executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of the

magistrate's family, and then only if such service will not interfere with the proper performance of the magistrate's judicial duties.

(1) "Member of the magistrate's family" includes a spouse, child, grandchild, parent, grandparent, or any other relative of the magistrate by blood or marriage.

(2) As a family fiduciary, a magistrate is subject to the following restrictions:

(a) A magistrate should not serve if it is likely that as a fiduciary the magistrate will be engaged in proceedings that would ordinarily come before the magistrate.

(b) While acting as a fiduciary, a magistrate is subject to the same restrictions on financial activities that apply to the magistrate in his or her personal capacity.

E. Arbitration or Mediation Activities. A magistrate should not act as an arbitrator or mediator.

F. Practice of law. A magistrate who is an attorney should not engage in the private practice of law except as permitted in N.C. Gen. Stat. § 84-2.

G. Extra-judicial appointments. A magistrate should not accept appointment to a committee, commission, or other body concerned with issues of fact or policy on matters other than those relating to cultural or historical matters, the economic, educational, legal, or governmental system, or the administration of justice. A magistrate may represent his or her country, state, or locality on ceremonial occasions or in connection with historical educational or cultural activities.

Commentary

[1] Although a magistrate may not contemporaneously hold the Office of Magistrate and be engaged in the private practice of law, except to the limited extent permitted in N.C. Gen. Stat. § 84-2, a magistrate may act pro se in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies.

Rule 6

A magistrate may engage in political activity consistent with the magistrate's status as a public official.

A. Definitions. For the purposes of this Rule only, the following definitions apply:

(1) A "candidate" is a person actively and publicly seeking election to judicial office. A person becomes a candidate for judicial office as soon as the person makes a public declaration of candidacy, declares or files as a candidate with the appropriate election authority, authorizes solicitation or acceptance of contributions or public support, or sends a letter of intent to the Senior Resident Superior Court Judge, Chief District Court Judge, or Clerk of Superior Court.

(2) To "solicit" means to directly, knowingly, and intentionally make a request, appeal, or announcement, public or private, oral or written, whether in person or through the press, radio, television, telephone, Internet, billboard, or distribution and circulation of printed materials, that expressly requests other persons to contribute, give, loan, or pledge any money, goods, labor, services, or real property interest to a specific individual's efforts to be elected to public office.

(3) To "endorse" means to knowingly and expressly request, appeal, or announce publicly, orally or in writing, whether in person or through the press, radio, television, telephone, Internet, billboard, or distribution and circulation of printed materials, that other persons should support a specific individual in that person's efforts to be elected to public office.

B. General Prohibitions. A magistrate during his or her active term in office should not:

(1) act as a leader of or hold an office in a political organization; or

(2) using the title of magistrate, make speeches for a political organization or non-judicial candidate, or use the prestige of the magistrate's office to publicly endorse, support, oppose, or criticize a candidate for non-judicial public office; or

(3) solicit funds on behalf of a political party, organization, or an individual seeking election to a non-judicial office, by specifically asking for such contributions in person, by telephone, by electronic media, or letter; or

(4) endorse a candidate for public office except a candidate for judicial office.

C. Resignation upon Candidacy. A magistrate should resign the magistrate's judicial office prior to becoming a candidate either in a party primary or in a general election for a non-judicial office.

D. Restrictions on Other Political Activity. A magistrate should not engage in political activity inconsistent with the terms of this Rule. A magistrate may not be disciplined under these Rules merely for deciding to support or not to support a particular judicial candidate. This Rule does not prevent a magistrate from engaging in activities described in Rules 4 or 5 or from engaging in any other constitutionally protected political activity.

Commentary

[1] A magistrate's candidacy for a non-judicial elective office such as sheriff or county commissioner could undermine the public's confidence in the magistrate's impartiality, especially if the election is partisan. *See, e.g.*, The North Carolina Code of Judicial Conduct, Canon 7.B.(5), (Nov. 6, 2015) (requiring judges to resign prior to becoming candidates for non-judicial offices).

[2] When seeking support or endorsement, or when communicating directly with an appointing or confirming authority, a candidate for appointment or reappointment as a magistrate must not make any pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

[3] Although family members of magistrates are free to engage in their own political activity, including running for public office, there is no "family exception" to the prohibition against a magistrate publicly endorsing candidates for non-judicial elective offices. A magistrate should not become actively involved in a family member's political activity or campaign for non-judicial public office. To avoid public misunderstanding, magistrates should take, and should urge their family members to take, reasonable steps to avoid any implication that the magistrates are using the prestige of their office to further the family member's political agenda or campaigns.

Rule 7

Magistrates should respect the Chief District Court Judge's administrative supervision and authority over them.

A. Discipline. Magistrates may be subject to discipline for:

(1) failing to follow a Chief District Court Judge's administrative directives;

(2) failing to comply and follow the North Carolina Rules of Conduct for Magistrates;

(3) willful misconduct in office;

(4) willful and persistent failure to perform the magistrate's duties;

(5) habitual intemperance;

(6) a conviction of a crime involving moral turpitude;

(7) conduct prejudicial to the administration of justice that brings the judicial office into disrepute; or

(8) engaging in any other conduct that could serve as a basis for removal under N.C. Gen. Stat. § 7A-173.

B. Forms of Discipline. A Chief District Court Judge may discipline magistrates under his or her supervision and authority. Discipline need not be progressive and may include, but is not limited to:

(1) counseling, either orally or in writing;

(2) a recommendation or directive for additional training;

(3) a written warning or reprimand; or

(4) the filing of sworn written charges in the Office of Clerk of Superior Court for the county in which the magistrate was appointed, and participation in subsequent proceedings.

C. Acknowledging Discipline.

(1) If requested by the Chief District Court Judge, a magistrate should sign a statement that sets out any discipline imposed on the magistrate and the basis for that discipline. The magistrate's signature acknowledges receipt of the statement but does not signify agreement with its contents. The magistrate may submit written objections to the statement.

(2) A magistrate's refusal to sign a disciplinary statement as required by Rule 7.C.(1) may constitute a separate violation of these Rules.

Commentary

[1] State law gives each Chief District Court Judge "administrative supervision and authority over the operation of the district courts and magistrates in his district." N.C. Gen. Stat. § 7A-146. The statute lists several examples of that authority. For instance, a Chief District Court Judge may "[a]ssign[] matters to magistrates, and consistent with the salaries set by the Administrative Officer of the Courts, prescrib[e] times and places at which magistrates shall be available for the performance of their duties[.]" *Id.* § 7A-146(4).

[2] Disciplinary records are part of a magistrate's personnel record, except for sworn written charges filed in the Office of Clerk of Superior Court pursuant to N.C. Gen. Stat. § 7A-173 and subsequent filings in any removal proceeding, which are court records. Personnel records are protected from public disclosure in accordance with Article 7 of Chapter 126 of the General Statutes of North Carolina.

These Rules are effective October 1, 2022.

Adopted on September 26, 2022

Andrew T. Heath
Director
Administrative Office of the Courts

A Record of the North Carolina Rules of Conduct for Magistrates

Rules Affected	Key Dates
Complete Rules Set	Adopted 1 October 2021 Effective1 October 2021
Rule 7	Adopted September 26, 2022 Effective 1 October 2022

Article 16.

Magistrates.

§ 7A-170. Nature of office and oath; age limit for service.

(a) A magistrate is an officer of the district court. Before entering upon the duties of his office, a magistrate shall take the oath of office prescribed for a magistrate of the General Court of Justice. A magistrate possesses all the powers of his office at all times during his term.

(b) No magistrate may continue in office beyond the last day of the month in which the magistrate reaches the mandatory retirement age for justices and judges of the General Court of Justice specified in G.S. 7A-4.20. (1965, c. 310, s. 1; 1969, c. 1190, s. 13; 1977, c. 945, s. 2; 2013-277, s. 1.)

§ 7A-171. Numbers; appointment and terms; vacancies.

(a) The General Assembly shall establish a minimum quota of magistrates appointed in each county. In no county shall the minimum quota be less than one. The number of magistrates appointed in a county, above the minimum quota set by the General Assembly, is determined by the Administrative Office of the Courts after consultation with the chief district court judge for the district in which the county is located.

(a1) The initial term of appointment for a magistrate is two years and subsequent terms shall be for a period of four years. The term of office begins on the first day of January of the odd-numbered year after appointment. The service of an individual as a magistrate filling a vacancy as provided in subsection (d) of this section does not constitute an initial term. For purposes of this section, any term of office for a magistrate who has served a two-year term is for four years even if the two-year term of appointment was before the effective date of this section, the term is after a break in service, or the term is for appointment in a different county from the county where the two-year term of office was served.

(b) Not earlier than the Tuesday after the first Monday nor later than the third Monday in December of each even-numbered year, the clerk of the superior court shall submit to the senior regular resident superior court judge of the district or set of districts as defined in G.S. 7A-41.1(a) in which the clerk's county is located the names of two (or more, if requested by the judge) nominees for each magisterial office for the county for which the term of office of the magistrate holding that position shall expire on December 31 of that year. Not later than the fourth Monday in December, the senior regular resident superior court judge shall, from the nominations submitted by the clerk of the superior court, appoint magistrates to fill the positions for each county of the judge's district or set of districts.

(c) If an additional magisterial office for a county is approved to commence on January 1 of an odd-numbered year, the new position shall be filled as provided in subsection (b) of this section. If the additional position takes effect at any other time, it is to be filled as provided in subsection (d) of this section.

(d) Within 30 days after a vacancy in the office of magistrate occurs the clerk of superior court shall submit to the senior regular resident superior court judge the names of two (or more, if so requested by the judge) nominees for the office vacated. Within 15 days after receipt of the nominations the senior regular resident superior court judge shall appoint from the nominations received a magistrate who shall take office immediately and shall serve until December 31 of the even-numbered year, and thereafter the position shall be filled as provided in subsection (b) of this section. (1965, c. 310, s. 1; 1967, c. 691, s. 15; 1971, s. 84, s. 1; 1973, c. 503, s. 2; 1977, c. 945,

ss. 3, 4; 1987 (Reg. Sess., 1988), c. 1037, s. 17; 2004-128, s. 19; 2006-187, s. 7(c); 2022-47, s. 5(c).)

§ 7A-171.1. Duty hours, salary, and travel expenses within county.

(a) The Administrative Officer of the Courts, after consultation with the chief district judge and pursuant to the following provisions, shall set an annual salary for each magistrate:

(1) A full-time magistrate shall be paid the annual salary indicated in the table set out in this subdivision. A full-time magistrate is a magistrate who is assigned to work an average of not less than 40 hours a week during the term of office. The Administrative Officer of the Courts shall designate whether a magistrate is full-time. Initial appointment shall be at the entry rate. A magistrate's salary shall increase to the next step every two years on the anniversary of the date the magistrate was originally appointed for increases to Steps 1 through 3, and every four years on the anniversary of the date the magistrate was originally appointed for increases to Steps 4 through 6:

Table of Salaries of Full-Time Magistrates

Step Level	Annual Salary
Entry Rate	$43,462
Step 1	$46,670
Step 2	$50,131
Step 3	$53,795
Step 4	$58,186
Step 5	$63,473
Step 6	$69,401.

(2) A part-time magistrate is a magistrate who is assigned to work an average of less than 40 hours of work a week during the term, except that no magistrate shall be assigned an average of less than 10 hours of work a week during the term. A part-time magistrate is included, in accordance with G.S. 7A-170, under the provisions of G.S. 135-1(10) and G.S. 135-40.2(a). The Administrative Officer of the Courts designates whether a magistrate is a part-time magistrate. A part-time magistrate shall receive an annual salary based on the following formula: The average number of hours a week that a part-time magistrate is assigned work during the term shall be multiplied by the annual salary payable to a full-time magistrate who has the same number of years of service prior to the beginning of that term as does the part-time magistrate and the product of that multiplication shall be divided by the number 40. The quotient shall be the annual salary payable to that part-time magistrate.

(3) Notwithstanding any other provision of this subsection, a magistrate who is licensed to practice law in North Carolina or any other state shall receive the annual salary provided in the Table in subdivision (1) of this subsection for Step 4.

(a1) Repealed by Session Laws 2018-5, s. 35.7, effective July 1, 2018.

(a2) The Administrative Officer of the Courts shall provide magistrates with longevity pay at the same rates as are provided by the State to its employees subject to the North Carolina Human Resources Act.

(b) Notwithstanding G.S. 138-6, a magistrate may not be reimbursed by the State for travel expenses incurred on official business within the county in which the magistrate resides or is appointed. (1977, c. 945, s. 5; 1979, c. 838, s. 84; c. 991; 1979, 2nd Sess., c. 1137, s. 11; 1981, c. 914, s. 1; c. 1127, s. 11; 1983, c. 761, s. 199; c. 923, s. 217; 1983 (Reg. Sess., 1984), c. 1034, ss. 84, 211; 1985, c. 479, s. 210; c. 698, ss. 13(a), (b) (14); 791, s. 39.1; 1985 (Reg. Sess., 1986), c. 1014, ss. 36, 223(a); 1987, c. 564, s. 12; c. 738, ss. 22, 34; 1987 (Reg. Sess., 1988), c. 1086, s. 16; 1989, c. 752, s. 33; 1991, c. 742, s. 14(a); 1991 (Reg. Sess., 1992), c. 900, ss. 41, 43; c. 1044, s. 9.1; 1993, c. 321, s. 60; 1993 (Reg. Sess., 1994), c. 769, s. 7.13(b), (c); 1995, c. 507, s. 7.7(a), (b); 1996, 2nd Ex. Sess., c. 18, s. 28.6(a), (b); 1999-237, s. 28.6(a), (b); 2000-67, s. 26.6; 2001-424, s. 32.7; 2004-124, s. 31.7(b); 2005-276, s. 29.7(a), (b); 2006-66, s. 22.7(a), (b); 2007-323, ss. 28.7(a), (b); 2008-107, ss. 26.7(a), (b); 2012-142, s. 25.1A(g), (h); 2013-382, s. 9.1(c); 2014-100, s. 35.3(f), (g); 2016-94, s. 36.6(a); 2017-57, s. 35.4C; 2018-5, s. 35.7; 2019-209, s. 3.7(a), (a1); 2021-180, s. 39.8(a), (a1); 2022-47, s. 5(d); 2022-74, s. 39.8.)

§ 7A-171.2. Qualifications for nomination or renomination.

(a) In order to be eligible for nomination or for renomination as a magistrate an individual shall be a resident of North Carolina, and the individual shall either be a resident of the county for which the magistrate is seeking nomination or renomination or a resident of a county that is contiguous to that county.

(b) To be eligible for nomination as a magistrate, an individual shall have at least eight years' experience as the clerk of superior court in a county of this State or shall have a four-year degree from an accredited senior institution of higher education or shall have a two-year associate degree and four years of work experience in a related field, including teaching, social services, law enforcement, arbitration or mediation, the court system, or counseling. The Administrative Officer of the Courts may determine whether the work experience is sufficiently related to the duties of the office of magistrate for the purposes of this subsection. In determining whether an individual's work experience is in a related field, the Administrative Officer of the Courts shall consider the requisite knowledge, skills, and abilities for the office of magistrate.

The eligibility requirements prescribed by this subsection do not apply to individuals holding the office of magistrate on June 30, 1994, and do not apply to individuals who have been nominated by June 30, 1994, but who have not been appointed or taken the oath of office by that date.

(c) In order to be eligible for renomination as a magistrate an individual shall have successfully completed the courses of basic training and annual in-service training for magistrates prescribed by G.S. 7A-177.

(d) Notwithstanding any other provision of this subsection, an individual who holds the office of magistrate on July 1, 1977, shall not be required to have successfully completed the course of basic training for magistrates prescribed by G.S. 7A-177 in order to be eligible for renomination as a magistrate. (1977, c. 945, s. 6; 1993 (Reg. Sess., 1994), c. 769, s. 7.13(a); 2003-381, s. 1; 2021-146, s. 1; 2022-47, s. 5(a).)

§ 7A-171.3. Magistrate rules of conduct.

The Administrative Office of the Courts shall prescribe rules of conduct for all magistrates not inconsistent with the Constitution of the United States or inconsistent with the Constitution of the State of North Carolina. The rules of conduct shall apply to all magistrates and shall include rules governing the following:

(1) Standards of professional conduct and timeliness.

(2) Required duties and responsibilities.
(3) Methods for ethical decision making.
(4) Any other topic deemed relevant by the Administrative Office of the Courts. (2021-47, s. 13(a).)

§ 7A-172. Repealed by Session Laws 1977, c. 945, s. 5.

§ 7A-173. Suspension; removal; reinstatement.

(a) A magistrate may be suspended from performing the duties of the magistrate's office by the chief district judge of the district court district in which the magistrate's county of appointment is located. A magistrate may be removed from office by the senior regular resident superior court judge of, or any regular superior court judge holding court in, the district or set of districts as defined in G.S. 7A-41.1(a) in which the magistrate's county of appointment is located. Grounds for suspension or removal are the same as for a judge of the General Court of Justice.

(b) Suspension from performing the duties of the office may be ordered upon filing of sworn written charges in the office of clerk of superior court for the county in which the magistrate was appointed. If the chief district judge, upon examination of the sworn charges, finds that the charges, if true, constitute grounds for removal, the chief district judge may enter an order suspending the magistrate from performing the duties of the magistrate's office until a final determination of the charges on the merits. During suspension the salary of the magistrate continues.

(c) If a hearing, with or without suspension, is ordered, the magistrate against whom the charges have been made shall be given immediate written notice of the proceedings and a true copy of the charges, and the matter shall be set by the chief district judge for hearing before the senior regular resident superior court judge or a regular superior court judge holding court in the district or set of districts as defined in G.S. 7A-41.1(a) in which the magistrate's county of appointment is located. The hearing shall be held in a county within the district or set of districts not less than 10 days nor more than 30 days after the magistrate has received a copy of the charges. The hearing shall be open to the public. All testimony offered shall be recorded. At the hearing the superior court judge shall receive evidence, and make findings of fact and conclusions of law. If the judge finds that grounds for removal exist, the judge shall enter an order permanently removing the magistrate from office, and terminating the magistrate's salary. If the judge finds that no such grounds exist, he shall terminate the suspension, if any.

(d) A magistrate may appeal from an order of removal to the Court of Appeals on the basis of error of law by the superior court judge. Pending decision of the case on appeal, the magistrate shall not perform any of the duties of the magistrate's office. If, upon final determination, the magistrate is ordered reinstated, either by the appellate division or by the superior court on remand, the magistrate's salary shall be restored from the date of the original order of removal. (1965, c. 310, s. 1; 1967, c. 108, s. 4; 1973, c. 148, ss. 3, 4; 1987 (Reg. Sess., 1988), c. 1037, s. 18; 2022-47, s. 5(e).)

§ 7A-174. Bonds.

Prior to taking office, magistrates shall be bonded, individually or collectively, in such amount or amounts as the Administrative Officer of the Courts shall determine. The bond or bonds shall be conditioned upon the faithful performance of the duties of the office of magistrate. The Administrative Officer shall procure such bond or bonds from any indemnity or guaranty company

authorized to do business in North Carolina, and the premium or premiums shall be paid by the State. (1965, c. 310, s. 1.)

§ 7A-175. Records to be kept.

A magistrate shall keep such dockets, accounts, and other records, under the general supervision of the clerk of superior court, as may be prescribed by the Administrative Office of the Courts. (1965, c. 310, s. 1.)

§ 7A-176. Office of justice of the peace abolished.

The office of justice of the peace is abolished in each county upon the establishment of a district court therein. (1965, c. 310, s. 1.)

§ 7A-177. Training course in duties of magistrate.

(a) Within six months of taking the oath of office as a magistrate for the first time, a magistrate is required to attend and satisfactorily complete a course of basic training of at least 40 hours in the civil and criminal duties of a magistrate. The Administrative Office of the Courts is authorized to contract with the School of Government at the University of North Carolina at Chapel Hill or with any other qualified educational organization to conduct this training, and to reimburse magistrates for travel and subsistence expenses incurred in taking such training.

(b) Repealed by Session Laws 2021-146, s. 2, effective January 1, 2022.

(b1) Except for the calendar year in which a magistrate completes the course of basic training referenced in subsection (a) of this section, every magistrate shall annually and satisfactorily complete a course of in-service training consisting of at least 12 hours in the civil and criminal duties of a magistrate, including, but not limited to, the following subjects:

(1) Setting conditions of pretrial release.
(2) Impaired driving laws.
(3) Issuing criminal processes.
(4) Issuing search warrants.
(5) Technology.
(6) Orders of protection.
(7) Summary ejectment laws.

The Administrative Office of the Courts is authorized to conduct the training required by this subsection or contract with the School of Government at the University of North Carolina at Chapel Hill or with any other qualified educational organization to conduct this training. The training may be conducted in person or online. The Administrative Office of the Courts shall adopt policies for the implementation of this subsection. (1975, c. 956, s. 11; 1983 (Reg. Sess., 1984), c. 1116, s. 87; 2006-264, s. 29(a); 2007-393, s. 15; 2007-484, s. 25.5; 2008-187, s. 2; 2021-146, s. 2; 2022-47, s. 20(a).)

§ 7A-178. Magistrate as child support hearing officer.

A magistrate who meets the qualifications of G.S. 50-39 and is properly designated pursuant to G.S. Chapter 50, Article 2, to serve as a child support hearing officer, may serve in that capacity and has the authority and responsibility assigned to child support hearing officers by Chapter 50. (1985 (Reg. Sess., 1986), c. 993, s. 2.)

§ 7A-179. Reserved for future codification purposes.

Ethics for Magistrates

Corrine Lusic, Deputy Legal Counsel

July 2024

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Topics

- Why Does Ethics Matter?
- History of the Rules of Conduct
- Individual Rules w/hypothetical problems
- Recent legislation
- Resources

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2

Why Does Ethics Matter?

?

3

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History of the Magistrate Rules of Conduct

In 2021, the General Assembly passed legislation directing AOC to promulgate rules of conduct for magistrates.

> The Administrative Office of the Courts shall prescribe rules of conduct for all magistrates not inconsistent with the Constitution of the United States or inconsistent with the Constitution of the State of North Carolina. The rules of conduct shall apply to all magistrates and shall include rules governing the following:
>
> (1) Standards of professional conduct and timeliness.
> (2) Required duties and responsibilities.
> (3) Methods for ethical decision making.
> (4) Any other topic deemed relevant by the Administrative Office of the Courts.
>
> S.L. 2021-47, s. 13(a); G.S. § 7A-171.3

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History of the Magistrate Rules of Conduct

Prior to this legislation, AOC's Office of General Counsel advised magistrates to conform their behavior to the Judicial Code of Conduct unless a provision was clearly not applicable.

Why?

"Grounds for suspension or removal [of a magistrate] are the same as for a judge of the General Court of Justice." G.S. § 7A-173(a).

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History of the Magistrate Rules of Conduct

The removal process is set out in G.S 7A-173:

- "Sworn written charges" filed with clerk of superior court.
- Charges assessed by chief district court judge to determine, if true, whether charges are grounds for removal. Refers to resident superior court judge if true.
- Public hearing by resident superior court judge to determine if grounds for removal exist.

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6

History of the Magistrate Rules of Conduct

What are the grounds for a judge (and magistrate) to be suspended or removed?

- willful misconduct in office,
- willful and persistent failure to perform the judge's duties,
- habitual intemperance,
- conviction of a crime involving moral turpitude,
- conduct prejudicial to the administration of justice that brings the judicial office into disrepute, and
- temporary (suspension), or permanent or likely to become permanent (removal), physical or mental incapacity interfering with the performance of the judge.

G.S. § 7A-376(b), (c)

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History of the Magistrate Rules of Conduct

THE NORTH CAROLINA CODE OF JUDICIAL CONDUCT

Preamble

An independent and honorable judiciary is indispensable to justice in our society, and to this end and in furtherance thereof, this Code of Judicial Conduct is hereby established. A violation of this Code of Judicial Conduct may be deemed conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or willful misconduct in office, or otherwise as grounds for disciplinary proceedings pursuant to Article 30 of Chapter 7A of the General Statutes of North Carolina. No other code or proposed code of judicial conduct shall be relied upon in the interpretation and application of this Code of Judicial Conduct.

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History of the Magistrate Rules of Conduct

How did AOC develop the Rules of Conduct?

- Looked to the Judicial Code of Conduct
- Relied on Chief Justice Committee on Professionalism magistrate committee working group
  - Magistrates were represented on this committee by the then-president of the Magistrates Association (Jason Cheeks)
- Relied on prior experience with magistrates and chief district court judges

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Magistrate Rules of Conduct

The first North Carolina Rules of Conduct for Magistrates was promulgated and made effective October 1, 2021.

An amended version has been promulgated and became effective October 1, 2022.

https://www.nccourts.gov/documents/publications/north-carolina-rules-of-conduct-for-magistrates

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Magistrate Rules of Conduct

Overview of the Rules:

- Seven overarching rules, with commentary on application
  - Rule 1: Integrity
  - Rule 2: Impropriety
  - Rule 3: Duties
  - Rules 4 and 5: Outside activities
  - Rule 6: Political activities
  - Rule 7: Discipline

11

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Rule 1

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

A magistrate should act to establish, maintain, and preserve the integrity of the office and should personally observe appropriate standards of conduct to ensure that the integrity of the office is protected and preserved.

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Problem

Magistrate Daisy Miller is a criminal magistrate that regularly interacts with local law enforcement. She was high school classmates with Officer Boyd and always had a crush on him. Recently, she has been making comments to Officer Boyd during work, such as "you look like you've been working out" and "your uniform is fitting particularly well today." She has also started touching Officer Boyd's arm and shoulder when interacting and brushing up against him as they pass in the hallway. Today, her shift ended at the same time as Officer Boyd's, and she asked him to dinner.

What if he said no and reminded her that he was married.

Has Magistrate Miller violated Rule 1?

In re Inquiry Concerning a Judge (Daisy), 359 N.C. 622, 614 S.E.2d 529 (2005) (censuring a judge for hugging, touching, and otherwise subjecting a judicial assistant and a paralegal to unwanted, uninvited, and inappropriate physical

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Rule 2

A magistrate should avoid impropriety in all the magistrate's activities.

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Rule 2, *continued*

- General requirement to respect and comply with the law.
- Duty to report criminal charges against self, immediate family member, or someone living in household to Chief District Court Judge
- General prohibition against using prestige of the magistrate's office to advance the private interest of others
- Ban on membership in organizations that practice unlawful discrimination

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Problem

Magistrate Jones is traveling home from vacation late at night and is pulled over for a broken taillight. He is exhausted and can't believe that an officer would pull him over since he has a magistrate's license plate. He becomes belligerent and directs vulgar language and expletives towards police officers.

Has Magistrate Jones violated Rule 2?

In re Inquiry Concerning a Judge (LaBarre), 369 N.C. 538, 798 S.E.2d 736 (2017) (censuring a judge for driving while impaired and for becoming belligerent and directing vulgar language and expletives towards police officers and other emergency responders after he was asked to submit to a second breath test)

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Problem

Magistrate Jones has worked closely with Deputy Sheriff Earnest for several years. Deputy Sheriff Earnest intends to apply to law school and asks Magistrate Jones to write her a recommendation. Magistrate Jones happily complies, using his official letterhead and including his official title below his signature.

Has Magistrate Jones violated Rule 2?

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Rule 3

A magistrate should perform the duties of the magistrate's office impartially and diligently.

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Rule 3, *Continued*

- Adjudicative responsibilities
  - Faithful to the law
  - Fair, Courteous, and Prompt
  - No unlawful *ex parte* communications (exception for disinterested expert—UNC SOG or AOC's OGC)
  - unswayed by partisan interests
  - abstain from public comment about pending proceedings
- Educational duties and responsibilities
  - Duty to complete needed instruction
- Administrative responsibilities
  - Diligent
  - Competent
  - Present on the job (follow scheduling directives)
  - Prompt
- Duty to disqualify or recuse where impartiality may be reasonably questioned, including:
  - Personal bias
  - Personal knowledge of facts
  - Relations within the third degree are in play as parties, attorneys, or witnesses

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Rule 3, *Continued*

Duty to complete educational requirements….

> Except for the calendar year in which a magistrate completes the course of basic training … every magistrate shall annually and satisfactorily complete a course of in-service training consisting of at least 12 hours in the civil and criminal duties of a magistrate, including, but not limited to, the following subjects:
>
> (1) Setting conditions of pretrial release.
> (2) Impaired driving laws.
> (3) Issuing criminal processes.
> (4) Issuing search warrants.
> (5) Technology.
> (6) Orders of protection.
> (7) Summary ejectment laws.

G.S. 7A-177(b1).

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Problem

Magistrate Maple Woods is conducting an initial appearance for John Little. John Little's cousin April Big learns that her cousin is in custody, shows up at the magistrate's office, and starts disrupting the initial appearance. Magistrate Woods holds Ms. Big in criminal contempt.

A few months later, Ms. Woods asked the District Attorney's office to drop speeding charges against a friend. She notes that if the charges are dropped, then she will consider dropping the contempt charges brought against Ms. Big.

Has Magistrate Woods violated Rule 3?

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Problem

Magistrate Upright is hearing small claims cases. The plaintiff in one case is Magistrate Upright's first cousin.

Does Rule 3 necessarily prevent Magistrate Upright from hearing her cousin's case?

22

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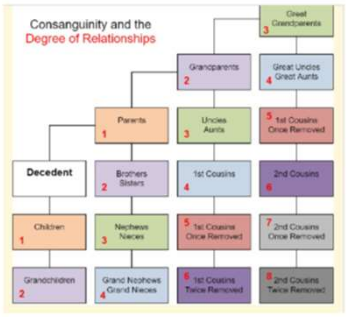

23

23

Problem

In early June, Magistrate Jack Sparrow asked the Chief Magistrate for a week of vacation the last week of July. The Chief Magistrate denied this request because they were down three magistrates and were still in the process of filling those positions. The Chief explained that vacation would be possible starting in late August when the other positions were filled and trained. Magistrate Sparrow calls in sick to work the last week of July.

Has Magistrate Sparrow violated Rule 3?

24

24

Rule 4

A magistrate may participate in cultural or historical activities or engage in activities concerning the legal, economic, educational, or governmental system, or the administration of justice.

- Participation in groups is permissible if it does not cast substantial doubt on magistrate's ability to decide impartially
- Permits fund raising as long as a magistrate avoids the impression they are acting in an official capacity.

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25

Rule 5

A magistrate should regulate the magistrate's extra-judicial activities to ensure that they do not prevent the magistrate from carrying out the magistrate's official duties.

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Rule 5, *Continued*

- May participate in recreational, civic and charitable activities that do not adversely reflect on impartiality or interfere with duties.
  - Fundraising okay unless you give impression it is in official capacity.
- Business and financial activities
  - Refrain from financial dealings that reflect adversely on impartiality.
    - Includes secondary employment
  - Includes a gift prohibition with exceptions

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Rule 5, *Continued*

- Shall not serve in listed fiduciary roles except for family, and then only if it won't interfere with duties
- May not act as an arbitrator or mediator
- Practice of law generally prohibited

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Problem

Magistrate Leslie Knope is civically minded and actively participates in the Daughters of the American Revolution (DAR).

Does her participation in DAR violate Rule 4 or Rule 5?

….. Her local DAR chapter is co-hosting a fundraiser for the local chapter of the Police Benevolence Society to raise funds for the family of an officer that was recently shot and killed. Magistrate Knope is asked to be the chair of fundraising committee.

Can she serve as the chair?

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Problem

Magistrate Wreck negligently drives his car into the back of another vehicle. The owner sues Magistrate Wreck for the damage. Magistrate Wreck, who is a licensed attorney, decides to represent himself in the lawsuit.

Is Magistrate Wreck in violation of Rule 5?

30

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Rule 6

A magistrate may engage in political activity consistent with the magistrate's status as a public official.

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Rule 6, *Continued*

- Definitions
- General prohibitions
  - Should not lead or hold office in political organization.
  - Should not use office to endorse, support, oppose, or solicit funds for candidate for *non-judicial* office.
  - May not endorse candidate for *non-judicial* office.
- Requires resignation upon candidacy for *non-judicial* office

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Problem

Magistrate Winner's husband is running for superior court judge. Magistrate Winner asks several family friends to contribute financially to her husband's campaign.

Has Magistrate Winner violated Rule 6?

33

33

Rule 7

Magistrates should respect the Chief District Court Judge's administrative supervision and authority over them.

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Rule 7, *Continued*

- Grounds for discipline-same as grounds for removal.
- Forms of discipline
  - Counselling
  - Recommended training
  - Written warning or reprimand; or
  - Petition for removal.
- Acknowledging discipline
  - Must sign disciplinary statement if CDCJ requests.

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Recent Legislation

HB193 made changes to G.S. 7A-146. Ratified on 7/13/23. Become law 7/21/23.

(13) Investigating written complaints against magistrates. The chief district judge may, in writing, delegate authority to an appointed chief magistrate to make preliminary investigations into written complaints against magistrates and to make a written report of their preliminary findings to the chief district judge. However, the delegation shall not authorize the chief magistrate to make written findings of misconduct or take any disciplinary action. Upon investigation and written findings of misconduct in violation of the Rules of Conduct for Magistrates, a chief district court judge may discipline a magistrate in accordance with the Rules of Conduct for Magistrates. Written complaints received by the chief district court judge and records of investigations into those complaints are to be treated as personnel records under Article 7 of Chapter 126 of the General Statutes. Notwithstanding Article 7 of Chapter 126 of the General Statutes, once a letter of caution, written reprimand, or suspension has been issued by the chief district court judge, the written complaint, and the record of the chief district court judge's action on that complaint, including any investigatory records, are no longer confidential personnel records."

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Why Does Ethics Matter?

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Resources

- Rules of Conduct for Magistrates (in your handouts)
- Tips on the Use of Social Media (NC Judicial Standards 2021)

https://www.nccourts.gov/assets/inline-files/Tips-on-the-Use-of-Social-Media.pdf?VersionId=iFbeJ.ns3SRst9R8gV8h4UkfY9m0w4Gz?iFbeJ.ns3SRst9R8gV8h4UkfY9m0w4Gz

- Judicial Ethics and Social Media (Michael Crowell 2015)

https://www.sog.unc.edu/file/40371/download?token=fVSgCycR

- Removal of Court Officials (Michael Crowell 2015)

https://www.sog.unc.edu/sites/www.sog.unc.edu/files/additional_files/Removal%20of%20court%20officials%20Jan%2015.pdf

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Thank You

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§ 7A-146. Administrative authority and duties of chief district judge.

The chief district judge, subject to the general supervision of the Chief Justice of the Supreme Court, has administrative supervision and authority over the operation of the district courts and magistrates in the chief district judge's district. These powers and duties include, but are not limited to, the following:

(1) Arranging schedules and assigning district judges for sessions of district courts.

(2) Arranging or supervising the calendaring of noncriminal matters for trial or hearing.

(3) Supervising the clerk of superior court in the discharge of the clerical functions of the district court.

(4) Assigning matters to magistrates, and consistent with the salaries set by the Administrative Officer of the Courts, prescribing times and places at which magistrates shall be available for the performance of their duties; however, the chief district judge may in writing delegate his authority to prescribe times and places at which magistrates in a particular county shall be available for the performance of their duties to another district court judge or the clerk of the superior court, or the judge may appoint a chief magistrate to fulfill some or all of the duties under subdivision (12) of this section, and the person to whom such authority is delegated shall make monthly reports to the chief district judge of the times and places actually served by each magistrate.

(5) Making arrangements with proper authorities for the drawing of civil court jury panels and determining which sessions of district court shall be jury sessions.

(6) Arranging for the reporting of civil cases by court reporters or other authorized means.

(7) Arranging sessions, to the extent practicable for the trial of specialized cases, including traffic, domestic relations, and other types of cases, and assigning district judges to preside over these sessions so as to permit maximum practicable specialization by individual judges.

(8) Repealed by Session Laws 1991 (Regular Session, 1992), c. 900, s. 118(b), effective July 15, 1992.

(9) Assigning magistrates when exigent circumstances exist to temporary duty outside the county of their appointment but within that district pursuant to the policies and procedures prescribed under G.S. 7A-343(11); and, upon the request of a chief district judge of another district and upon the approval of the Administrative Officer of the Courts, to temporary duty in the district of the requesting chief district judge pursuant to the policies and procedures prescribed under G.S. 7A-343(11).

(10) Designating another district judge of his district as acting chief district judge, to act during the absence or disability of the chief district judge.

(11) Designating certain magistrates to appoint counsel and accept waivers of counsel pursuant to Article 36 of this Chapter. This designation does not give any magistrate the authority to appoint counsel or accept waivers of counsel for potentially capital offenses, as defined by rules adopted by the Office of Indigent Defense Services.

(12) Designating a full-time magistrate in a county to serve as chief magistrate for that county for an indefinite term and at the judge's pleasure. The chief magistrate shall have the derivative administrative authority assigned by the chief district court judge under subdivision (4) of this section. This

subdivision applies only to counties in which the chief district court judge determines that designating a chief magistrate would be in the interest of justice.

(13) Investigating written complaints against magistrates. Upon investigation and written findings of misconduct in violation of the Rules of Conduct for Magistrates, a chief district court judge may discipline a magistrate in accordance with the Rules of Conduct for Magistrates. Written complaints received by the chief district court judge and records of investigations into those complaints are to be treated as personnel records under Article 7 of Chapter 126 of the General Statutes. Notwithstanding Article 7 of Chapter 126 of the General Statutes, once a letter of caution, written reprimand, or suspension has been issued by the chief district court judge, the written complaint, and the record of the chief district court judge's action on that complaint, including any investigatory records, are no longer confidential personnel records. (1965, c. 310, s. 1; 1971, c. 377, s. 8; 1977, c. 945, s. 1; 1983, c. 586, s. 1; 1983 (Reg. Sess., 1984), c. 1034, s. 85; 1985, c. 425, s. 2; c. 764, s. 8; 1985 (Reg. Sess., 1986), c. 852, s. 17; 1991 (Reg. Sess., 1992), c. 900, s. 118(b); 2009-419, s. 2; 2011-411, s. 2(b); 2013-89, s. 1; 2015-247, s. 3(a); 2018-138, s. 2.12(c); 2022-47, ss. 5(b), 6(a).)

REMOVAL OF COURT OFFICIALS

Michael Crowell
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Constitutional provisions

Article IV, Section 17 of the North Carolina Constitution addresses the removal of justices, judges, magistrates and clerks from office. The constitution says nothing about removal of district attorneys and public defenders.

Section 17(1) provides that the General Assembly may remove any judge or justice for mental or physical incapacity by two-thirds vote of all members of each house of the legislature. It also provides that the General Assembly may remove a judge or justice by impeachment. In practice, however, the legislature does not get involved in the discipline or removal of judges. (It appears that the last legislative impeachment of a judge was in 1901.) Discipline occurs, instead, through the statutes enacted pursuant to the authority described below.

Section 17(2) authorizes the legislature to set a procedure for removal of a justice or judge for mental or physical incapacity which interferes with the performance of duties and which is or is likely to become permanent. The section also empowers the legislature to set procedures for removal and censure for these grounds:

- Willful misconduct in office
- Willful and persistent failure to perform the duties of the office
- Habitual intemperance
- Conviction of a crime involving moral turpitude
- Conduct prejudicial to the administration of justice that brings the judicial office into disrepute

Section 17(3) authorizes the General Assembly to set the procedure for removal of a magistrate for misconduct or mental or physical incapacity.

Section 17(4) authorizes the legislature to set the procedure for removal of the clerk of court. The constitution says the removal is to be by the senior resident superior court judge serving the county and that the clerk is to be given at least ten days' notice of the charges.

The statutes implementing the constitutional provisions for removal of judges, magistrates and clerks are discussed below, as are the statutes governing removal of district attorneys and public defenders.

Removal or other discipline of judges

Article 30 of General Statutes Chapter 7A establishes the Judicial Standards Commission and set out the grounds and procedure for removal of judges [the word "judges" is used hereafter to include district and

superior court and Court of Appeals and justices of the Supreme Court]. Generally complaints go to the commission which has thirteen members, a combination of judges, lawyers and lay members. The commission investigates and may issue a private letter of caution on its own. For public reprimand, censure, suspension or removal, the commission recommends action to the Supreme Court.

As discussed at the end of this section, a separate statute empowers the governor to declare a judgeship vacant and appoint a replacement if a judge is disbarred. As also discussed at the end of this section, another statute provides that a judge convicted of certain felonies forfeits all retirement benefits.

Grounds for disciplinary action —

GS 7A-376(a) allows the Judicial Standards Commission to issue a private letter of caution to a judge for any violation of the Code of Judicial Conduct.

Tracking the constitutional provision discussed above, GS 7A-376(b) authorizes the Supreme Court, upon recommendation from the Judicial Standards Commission, to publicly reprimand censure, suspend or remove a judge for:

- Willful misconduct in office
- Willful and persistent failure to perform the duties of the office
- Habitual intemperance
- Conviction of a crime involving moral turpitude
- Conduct prejudicial to the administration of justice that brings the judicial office into disrepute

The preamble to the North Carolina Code of Judicial Conduct specifies that a violation of it may be considered conduct prejudicial to the administration of justice, willful conduct, or otherwise serve as grounds for discipline under the statute. The preamble goes on to say that no other code — such as, for example, the American Bar Association's Model Code of Judicial Conduct — may be relied upon in interpreting the North Carolina code.

Procedure — The procedure of the Judicial Standards Commission is set out in GS 7A-377. The commission may act on a citizen complaint or on its own. Pursuant to its rules, the commission is divided into two six-member panels, one to investigate complaints and decide whether to proceed to hearing, and the other to conduct the hearing. The chair of the commission sits on both panels, but otherwise membership may not overlap.

All papers submitted to the commission, and its investigation, are confidential and not subject to the public records law, unless waived by the judge being investigated. The commission may issue a private letter of caution which likewise is confidential.

Five members of the commission hearing panel have to agree on a recommendation to the Supreme Court for public reprimand, censure, suspension or removal. The target judge is entitled to submit a brief and argue to the court. The Supreme Court may act by majority vote and can either accept the recommended discipline, remand to the commission for further proceedings, or reject the recommendation and impose its own discipline.

If the Supreme Court issues a public reprimand, censures, suspends or removes a judge, the statement of charges, pleadings, commission recommendation and rest of the record becomes public; otherwise, those documents remain confidential.

Options for discipline — As already indicated, the Judicial Standards Commission may issue a private letter of caution. The Supreme Court may publicly reprimand, censure, suspend or remove the judge. Under GS 7A-376(b), if the judge is suspended it is without pay, and removal from office includes the loss of retirement benefits and disqualification from holding any further judicial office.

Physical or mental incapacity — GS 7A-376(c) authorizes the Supreme Court, on recommendation from the Judicial Standards Commission, to suspend a judge for temporary physical or mental incapacity that interferes with the performance of duties, and to remove a judge when the physical or mental incapacity is or is likely to become permanent. A judge suspended for incapacity continues to receive compensation and, if removed, is entitled to any earned retirement benefits but may not sit as an emergency judge.

Case notes — The following cases provide guidance in the discipline of judges:

In re Nowell, 293 NC 235 (1977). The district judge was censured for disposing of two traffic cases on his own without notice to the defendant or prosecutor. The court's holdings included:

- The statutes governing discipline of judges are constitutional.
- The terms "willful misconduct" and "conduct prejudicial to the administration of justice" are not unconstitutionally vague standards.
- The Code of Judicial Conduct is a guide to the meaning of the statutes.
- The standard for the Judicial Standards Commission to apply is clear and convincing evidence. That standard is higher than a preponderance of the evidence and lower than proof beyond a reasonable doubt.
- "Willful misconduct in office is the improper or wrongful use of the power of his office by a judge acting intentionally, or with gross unconcern for his conduct, and generally in bad faith. It involves more than an error of judgment or a mere lack of diligence. . . . A specific intent to use the powers of the judicial office to accomplish a purpose which the judge knew of should have known was beyond the legitimate exercise of his authority constitutes bad faith." At 248.
- "[A] judge may also, through negligence or ignorance not amounting to bad faith, behave in a manner prejudicial to the administration of justice so as to bring the judicial office into disrepute. [citation omitted] Likewise, a judge may also commit indiscretions, or worse, in his private life which nonetheless brings the judicial office into disrepute." At 248-49.
- Disciplinary action does not require that the judge personally benefitted financially.

In re Peoples, 296 NC 109 (1978). The district judge was removed for improper handling of traffic cases, putting them in his "personal file" and disposing of them on his own. Among the court's holdings were:

- A judge's resignation does not make a disciplinary proceeding moot because removal by the Supreme Court results in the additional punishment of the loss of retirement benefits and disqualification from holding further judicial office.
- The standard to be applied by the Judicial Standards Commission is clear and convincing evidence.
- Both the commission and Supreme Court can consider the judge's failure to testify.
- The Supreme Court is not bound by the commission's recommendation, it may decide on its own whether to censure, suspend or remove.
- The judge does not have to benefit personally for conduct to be prejudicial to the administration of justice.
- The Code of Judicial Conduct is the guide to proper behavior.
- Willful misconduct is worse than conduct prejudicial to the administration of justice, and a judge should be removed from office only for willful misconduct.
    - "[H]owever . . . conduct prejudicial to the administration of justice, if knowingly and persistently repeated, would itself rise to the level of willful misconduct in office. . . ." *In re Hunt*, 308 NC 328, 338 (1983).
- The provisions on loss of retirement benefits and disqualification from future judicial office are constitutional.
- The procedure provided by the Judicial Standards Commission according to the statutes and its rules satisfies the requirements of due process.

In re Martin, 302 NC 299 (1981). The district judge was censured and removed from office for attempting to bargain dismissal of defendants' cases in exchange for sexual favors and for presiding over a session in which his own traffic case was pending. The court's holdings included:

- The Judicial Standards Commission may use State Bar employees and district attorneys to prosecute judicial misconduct cases in addition to its statutory authorization to employ special counsel, obtain counsel from the Attorney General, employ investigators and obtain investigators from the State Bureau of Investigation. (The commission now has its own staff to investigate and prosecute cases.)
- Willful misconduct is not limited to actions while the judge is presiding in the courtroom, it may include private conduct.
- "Whether the conduct in question can fairly be characterized as 'private' or 'public' is not the inquiry; the proper focus is on, among other things, the nature and type of conduct, the frequency of occurrences, the impact which knowledge of the conduct would likely have on the prevailing attitudes of the community, and whether the judge acted knowingly or with a reckless disregard for the high standards of the judicial office." At 316.
- The Judicial Standards Commission and the Supreme Court may consider conduct that occurred in the judge's previous term of office. The end of a term and reelection of the judge does not insulate the prior conduct from discipline when there was no public knowledge of the conduct.

In re Kivett, 309 NC 635 (1983). The superior court judge was censured and removed from office for attempting to use his position to persuade the DA to not prosecute a case; treating

a defendant leniently in exchange for sexual favors; having sex in the judge's chambers; granting judicial favors to an individual because the individual assisted the judge with sexual liaisons; sexually assaulting a female probation officer; and attempting to persuade another judge to prevent a grand jury from indicting him. The court held:

- Conduct need not be criminal to be considered willful misconduct for purposes of removal.
- Combining investigative and judicial functions within the Judicial Standards Commission does not violate the judge's due process rights. (The commission now, by rule, is divided into two separate panels, one to investigate complaints and the other to conduct hearings.)
- The commission and Supreme Court may consider conduct that occurred before the judge's last reelection.

Removal based on disbarment — GS 7A-410 empowers the governor to declare and fill a vacancy in office when a judge is disbarred or suspended from the practice of law and all appeals under GS 84-28 have been exhausted. Under GS 7A-410.1 the judge's salary is suspended upon disbarment but is restored retroactively if the disbarment of suspension of the law license is reversed upon appeal.

Forfeiture of retirement benefits — Under GS 135-75.1 and -56 a judge who is convicted of certain specified federal and state felonies, primarily dealing with matters of public corruption, forfeits all state retirement benefits.

Removal of a magistrate

As discussed above, Article IV, Section 17(3) of the North Carolina Constitution authorizes the General Assembly to establish a procedure for removal of a magistrate for misconduct or mental or physical incapacity. The legislature has implemented that provision by enactment of GS 7A-173.

Grounds for removal — GS 7A-173(a) provides that the grounds for removal of a magistrate are the same as for removal of a judge. Thus, the grounds for removal are:

- Willful misconduct in office
- Willful and persistent failure to perform the duties of the office
- Habitual intemperance
- Conviction of a crime involving moral turpitude
- Conduct prejudicial to the administration of justice that brings the judicial office into disrepute

Because the grounds for removal are the same as for a judge, the Code of Judicial Conduct may be consulted to construe the statute. The preamble to the Code of Judicial Conduct says that any violation may be considered conduct prejudicial to the administration of justice or willful misconduct.

Procedure — The procedure for removal is set out in GS 7A-173(b), (c) and (d) and includes these steps:

- The process begins with the filing of "sworn written charges" with the clerk of court. The statute does not limit who may file such charges.
- If the chief district judge determines that the charges, if true, would be grounds for removal, the judge may suspend the magistrate pending a hearing. The magistrate's salary continues during the suspension.
- If a hearing is ordered, the chief district judge schedules a hearing before a superior court judge and sees that the magistrate is served with written notice of the hearing and a copy of the charges.
- The hearing may be before the senior resident superior court judge or any superior court judge holding court in the district.
- The hearing is to be held not less than ten and not more than 30 days after the magistrate has been given a copy of the charges.
- The hearing is public and must be recorded.
- The superior court judge must make findings of fact and conclusions of law.
- If the judge finds that grounds for removal exist, the judge must remove the magistrate from office and terminate the magistrate's salary. The statute does not give the judge discretion to order a lesser penalty.
- The magistrate may appeal the removal to the Court of Appeals for legal error. The magistrate is suspended from performing duties during the appeal.
- If the magistrate is restored to office upon appeal the magistrate is entitled to back pay to the time of removal.

Case law — The following cases provide additional guidance on removal of magistrates:

State v. Greer, 308 NC 515 (1983). Enactment of the removal statute does not prevent prosecution of a magistrate for violation of GS 14-230, corruption in office.

In re Ezzell, 113 NC App 388 (1994). The magistrate was removed for sexual harassment. The court's holdings included:

- It may be that prosecution of a magistrate for removal is not within the constitutional duties of a district attorney, and that the superior court judge was incorrect in requesting the DA to undertake that role, but in this case the magistrate did not have standing to raise the issue and could not show that it affected the result.
- The superior court judge may appoint an independent counsel to prosecute the removal.
- The senior resident superior court judge is not disqualified from hearing the removal proceeding just because the judge appointed the magistrate.

In re Kiser, 126 NC App 206 (1997). The magistrate was removed for aiding and abetting a teenager in unlawfully purchasing alcohol. The court held that although the grounds for removal of a magistrate are the same as for a judge, the court does not have discretion, as with a judge, to censure or suspend the magistrate; rather, by statute, the only option for the court is to remove the magistrate from office.

Note on mootness — A removal proceeding against a judge is not made moot by the judge's resignation because the judge may face punishment in addition to loss of the office — loss of retirement benefits and disqualification from future judicial office — as a result of the removal. Because a magistrate does not face such additional punishment, the resignation of the magistrate would make the removal proceeding moot. A magistrate who is removed is not disqualified from being subsequently appointed to the office.

Removal of the clerk of court

As discussed above, Article IV, Section 17(4) of the North Carolina Constitution provides for removal of the clerk of court by the senior resident superior court judge for misconduct or mental or physical incapacity. The statute implementing the constitutional provision is GS 7A-105. A separate statute provides for forfeiture of retirement benefits if a clerk is convicted of certain specified felonies.

Grounds for removal — Following the language of the constitution, GS 7A-105 provides that a clerk of court may be removed for willful misconduct or mental or physical incapacity. The statute does not further define those terms.

Procedure — GS 7A-105 specifies that the procedure for removal of a clerk is the same as for removal of a district attorney except for where the removal petition is filed and who hears the removal proceeding. The procedure for removal of a district attorney is described below. When the proceeding is for removal of a clerk, the sworn affidavit which alleges the grounds for removal is filed with the chief district judge rather than with the clerk. The removal hearing for a clerk is heard by senior resident superior court judge of the district. In practice, the senior resident judge often will recuse and another judge will have to be assigned to hear the matter. The senior resident may suspend the clerk pending the hearing, if there is probable cause to believe the charges are true, and may appoint an acting clerk during the suspension.

Forfeiture of retirement benefits — Under GS 135-75.1 and -56 a clerk who is convicted of certain specified federal and state felonies, primarily involving matters of public corruption, forfeits all state retirement benefits.

Removal of the district attorney

The North Constitution is silent on removal of a district attorney, but GS 7A-66 sets out the grounds for removal and the procedure.

As discussed at the end of this section, a separate statute empowers the governor to declare a vacancy and appointment a replacement when a district attorney is disbarred. Yet another statute, also discussed at the end of this section, provides that a district attorney forfeits all retirement benefits upon conviction of certain specified felonies.

Grounds for removal — The grounds for suspension or removal of a district attorney as specified in GS 7A-66 are:

- Mental or physical incapacity interfering with the performance of duties that is, or is likely to become, permanent
- Willful misconduct in office
- Willful and persistent failure to perform the duties of the office
- Habitual intemperance
- Conviction of a crime involving moral turpitude
- Conduct prejudicial to the administration of justice which brings the office into disrepute
- Knowingly authorizing or permitting an assistant district attorney to commit any act which would be grounds for removal

Procedure — The procedure for removal, as set out in GS 7A-66, includes these steps:

- The process begins with the filing of a sworn affidavit charging the district attorney with specific grounds for removal. The affidavit may be filed by any person. It is filed with the clerk of court of the county where the DA lives.
- The clerk is to bring the affidavit to the attention of the senior resident superior court judge immediately.
- The senior resident judge is to review and act upon the charges within 30 days or refer the matter within that time to another superior court judge who either lives in the district or is holding court there.
- The judge reviewing the charges may, but is not required to, suspend the DA pending a hearing if the judge determines that the charges would indeed be grounds for removal if true and that there is probable cause to believe the charges are true. The DA's salary continues during the suspension.
- If the judge determines that the charges are not grounds for removal, or that there is no probable cause to believe they are true, the judge is to dismiss the proceeding.
- The DA is to be given written notice of the hearing with a copy of the charges. The statute does not specify who is responsible for giving the notice. In the absence of other direction, the superior court judge who sets the hearing should direct that the notice be served.
- The hearing is to be held not less than ten and not more than 30 days after the notice is served.
- The hearing may be before the superior court judge who reviewed the charges or any other superior court judge who lives in or is holding court in the district.
- The hearing is required to be public and must be recorded.
- The judge is to make findings of fact and conclusions of law. The judge must order removal and terminate the DA's salary upon finding that grounds for removal exist.
- The DA may appeal a removal order to the Court of Appeals for error of law. The DA may not perform duties of the office while the appeal is pending. A DA who is reinstated upon appeal or remand is entitled to back pay to the time of removal.

Appointment of acting district attorney — GS 7A-62 authorizes the governor to appoint an acting district attorney whenever the DA becomes "for any reason unable to perform his duties . . . ." That statute would allow the appointment of an acting DA when the DA is suspended pursuant to GS 7A-66.

Case law — The following cases provide guidance in the removal of the district attorney:

In re Spivey, 345 NC 404 (1997). The district attorney was removed from office for using a racial epithet while drunk at a bar. Among the court's holdings were:

- The constitution gives the General Assembly the authority to set the procedure for removal of a district attorney. A district attorney is not subject to removal by impeachment.
- The racial epithet used by the DA amounted to fighting words which are not subject to First Amendment protection and thus may be the basis for removal.
- The trial court may appoint a lawyer to prosecute the removal of the DA. Independent counsel is necessary to afford due process, to avoid the judge having to both present and decide the case.
- The removal proceeding is an inquiry, it is neither a civil suit nor a criminal prosecution.

In re Hudson, 165 NC App 894 (2004). The superior court judge dismissed a proceeding for removal of the district attorney, and the Court of Appeals upheld the decision. The court's holdings included:

- There is no appeal from a superior court judge's decision dismissing a removal proceeding.
- The person submitting the affidavit is not a party to the removal proceeding and thus has no right to appeal the dismissal.

In re Cline, ___ NC App ___, 749 SE2d 91 (2013). The district attorney was removed from office for statements she made about the senior resident superior court judge that falsely accused the judge of corruption, those statements bringing the office of DA into disrepute. The Court of Appeals upheld the removal and its holdings included:

- The 30-day time limit in the statute for holding the removal hearing is mandatory.
- The DA is not entitled to discovery (but the trial court's limitation of the scope of the inquiry enabled her to prepare adequately).
- Some of the DA's statements were protected by First Amendment free speech rights, and the DA had qualified immunity for some, but statements made with malice were not protected, and some statements were not subject to qualified immunity.

Removal based on disbarment — GS 7A-410 empowers the governor to declare and fill a vacancy in office when a district attorney is disbarred or suspended from the practice of law and all appeals under GS 84-28 have been exhausted. Under GS 7A-410.1 the DA's salary is suspended upon disbarment but is restored retroactively if the disbarment of suspension of the law license is reversed upon appeal.

Forfeiture of retirement benefits — Under GS 135-75.1 and -56 a district attorney who is convicted of certain specified federal and state felonies, primarily dealing with matters of public corruption, forfeits all state retirement benefits.

Removal of a public defender

GS 7A-498.7(h) says that a public defender or assistant public defender may be suspended or removed from office for the same reasons and under the same procedure as a district attorney. See the section above about removal of the district attorney.

Removal of the appellate defender

The appellate defender is appointed by the Commission on Indigent Defense Services for a four-year term. GS 7A-498.8(a) empowers the commission to suspend or remove the appellate defender for cause by a two-thirds vote of all members. The commission must give written notice of the cause and provide a hearing. A decision to suspend or remove is subject to appeal to Wake County superior court.

JUDICIAL STANDARDS COMMISSION
STATE OF NORTH CAROLINA

TIPS ON THE USE OF SOCIAL MEDIA
March 2021

This tip sheet addresses the use of social media by individuals subject to the North Carolina Code of Judicial Conduct. It is intended to offer general guidelines, and is not an exhaustive review of all potential ethical issues involving the use of social media and its impact on perceptions of the judicial branch and of a particular judge's impartiality, integrity and independence. Judges are encouraged to contact the Commission for advice with specific questions or situations.

I. Use of Social Media Generally

The North Carolina Code of Judicial Conduct does not provide any specific rules relating to social media and judges are not barred from its use. Instead, social media use is evaluated according to the same standards as other communications and public statements by judges. Any statement by a judge, no matter what the platform, should be professional, dignified and calculated to preserve the high standards of the judicial office. This includes refraining from comments that call into question the judge's ability to be fair and impartial in certain classes of cases. Judges should also be mindful that even seemingly "private" posts and messages can easily be captured by a screenshot and judges should follow the old adage "don't put something in writing unless you want it read back in court." Judges and others should also be aware that there is a North Carolina State Bar ethics opinion, 2014 FEO 8, that provides that lawyers and judges may connect on LinkedIn, and lawyers may "endorse" the skills of a judge, but a judge may not "endorse" the skills of the lawyer.

Common concerns that arise from a judge's use of social media include:

- Judges are viewed as biased and unfair in court proceedings based on ***connections on social media*** to litigants, lawyers or witnesses appearing before them
- Judges are viewed as biased and unprofessional based on ***inappropriate posts and content***

- Judges are viewed as concerned with political interests rather than commitment to the rule of law through ***hyper-partisan political comments***
- Judges directly fundraise and request ***donations for charities*** or promote goods or services
- Judges obtain factual information outside of court through ***ex parte or other communications***

These types of issues implicate a number of provisions in the Code of Judicial Conduct, including the following:

- **Canon 1:** a judge must "personally observe" standards of conduct to preserve the "integrity and independence of the judiciary"
- **Canon 2A:** a judge must "conduct himself/herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary"
- **Canon 2B:** a judge must not allow "family, social or other relationships to influence the judge's conduct or judgment"
- **Canon 2B:** a judge must not "convey or permit others convey the impression that they are in a special position to influence the judge"
- **Canon 3A(1):** a judge must not be swayed by "partisan interests, public clamor or fear of criticism"
- **Canon 3A(3):** a judge must be "patient, dignified and courteous" to litigants, lawyers, jurors, witnesses, lawyers and others
- **Canon 3A(4):** a judge must not knowingly initiate or consider *ex parte* or other communications
- **Canon 3A(6):** a judge must not make public comments about the merits of any pending federal or state case arising in North Carolina or addressing North Carolina law
- **Canon 3C:** a judge must disqualify in cases where "the judge's impartiality may reasonably be questioned"
- **Canon 4C & 5B(2):** a judge may not "actively assist" an organization with fundraising

II. Disqualification Issues Related to Connections and Content on Social Media

Judges should avoid posting content or making connections that will require frequent disqualification. Canon 3C provides that disqualification is required when a judge's impartiality could "reasonably" be questioned. Disqualification issues can arise because of ***content*** a judge posts on social media raising reasonable concerns about the judge's impartiality in specific cases. For example, posts that suggest racial, gender, political or other bias against a particular class of

persons or in particular types of cases can raise reasonable concerns about the judge's ability to be fair and impartial while presiding in court.

Disqualification issues can also arise because of a judge's social media ***connection*** to a party, lawyer or witness appearing in court. Generally, a connection to someone on social media without more is not enough to raise a disqualifying conflict. A number of factors, however, can be considered in finding that disqualification is advisable. Among many factors to consider include the following:

- What is the size of the judge's social media network (i.e., is it a small social network of close personal friends or a vast network of hundreds or even thousands of connections)?
- Is the connection on a personal social media account or a campaign-related account?
- Does the judge regularly post and exchange messages with this person on social media?
- When did the judge first connect with the person on social media?
- Does the judge have contact with the person outside of social media?

III. Content that Undermines Public Confidence in the Impartiality, Integrity or Independence of the Judiciary

Beyond disqualification, content of posts can spell trouble of judges whether it relates to court proceedings or otherwise. Canon 3A(6) specifically prohibits comments about the merits of pending cases, but judges should also refrain from running commentary on cases they hear or worse, commentary mocking litigants, witnesses or lawyers. Canon 1 and Canon 2 require judges at all times, in their personal and professional lives, to observe standards of conduct that promote public confidence in the integrity, impartiality and independence of the judiciary. This includes conduct on social media. Inappropriate, lewd, profane, inflammatory or unprofessional content can easily degrade the dignity of the judicial office and raise legitimate questions about the judge's temperament and professionalism. Even in campaign-related posts, judges should be mindful to avoid:

- False or misleading statements about campaign opponents
- Using social media during court time for campaign purposes
- Posting photos on social media taken during official proceedings
- Demeaning, degrading or insulting language towards an opponent, other candidate or political parties

UNC SCHOOL OF GOVERNMENT

ADMINISTRATION OF JUSTICE BULLETIN NO. 2015/09 | DECEMBER 2015

Judicial Ethics and Social Media

Michael Crowell

This bulletin was previously posted as a paper on the School of Government's Judicial Authority and Administration microsite in July 2015. For archival purposes, the paper has been converted to an article in the Administration of Justice Bulletin *series.*

There has been astounding growth of electronic social networks in the recent years. Huge numbers of people have joined Facebook, LinkedIn, Twitter, or Instagram or other online social networks as a means to notify others of news in their lives; to opine about current events; to keep up with what their friends, relatives, and acquaintances are doing; and to generally stay in touch with other people with whom they have something in common. Typically a social network allows someone to post a profile and photographs, videos, music, and so forth, and invite others to become "friends" or "fans." Some information may be shared with the whole world; other parts may be restricted to a select, small group.

Not surprisingly, judges have been slower than the general public to embrace social media. Still, an increasing number of judges are using such sites. As far back as 2012 a survey reported that nearly half of judges surveyed had a social media profile site, Facebook being the most popular by far. Undoubtedly the numbers are higher today.

For some time state bar regulatory agencies have been addressing the effect of electronic communication on traditional ethical rules for lawyers—the extent to which law firm websites constitute advertising, whether email inquiries establish an attorney/client relationship, and so on. Likewise, judges hearing cases have faced new legal issues involving electronic discovery and searches of computers. Judges have become all too familiar also with problems of jurors communicating with the outside world and conducting their own research via their smart phones and other devices.

Only recently, though, has much guidance been provided to judges about the ethics of their own social networking. The purpose of this bulletin is to summarize the known ethics opinions and court decisions concerning judges' use of social media.

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Judges' Use of Social Networks

For the most part judges use social media just like everyone else. They post news to share with friends, list their interests, opine about books and movies, put up photographs from their trips, and so on. They may be inclined to comment about current events, perhaps tweeting a few words about a news story or retweeting someone else's commentary. And, like everyone else on social media, they will read and view the news, comments and photographs of people who interest them.

Some judges incorporate social networks directly into their judicial activity. A judge may search Facebook and other sites to check on what lawyers and parties are up to, and some judges have been known to require juveniles or probationers to friend the judge or another official on Facebook so the judge can monitor their activities.

Judges who are subject to election, as in North Carolina, need to have a social media component to their campaign. They need a Facebook page and have to try to connect with voters by Twitter and Instagram and any other means they can find to get their message out.

Although it is now a bit dated, this article from *Slate* is a good overview of judges' use of social media and some of the challenges it presents. For a helpful, more up-to-date judge's perspective on the issues, see "To Follow or not to Follow: The Brave New World of Social Media" in Volume 53, No. 4, of *The Judges' Journal* (2014) by North Carolina Supreme Court Justice Barbara Jackson. There are also two older but useful articles on social networking in American Judicature Society publications. One is "Judges and Social Networks" in the Spring 2010 issue of the *Judicial Conduct Reporter*. The other is "The Too Friendly Judge? Social Networks and the Bench," in *Judicature* magazine, vol. 93, p. 236 (May-June 2010), but it is not online. Both articles were written by Cynthia Gray of the American Judicature Society; now that the society has gone out of business Ms. Gray has moved to the Center for Judicial Ethics at the National Center for State Courts. On that site she maintains the most up-to-date list of judicial ethics opinions and disciplinary actions related to social media, including private discipline not discussed below. Her work includes a weekly blog on ethics and discipline.

Social media is here, it's not going away, and judges will use it. Although some ethics opinions seem to want to steer judges away from electronic social networks altogether, that is no longer a realistic alternative. It is not judges' use of social media by itself that raises ethical issues; it is the content they post and who they communicate with.

Potential Ethical Issues

Participation in an electronic social network can implicate any number of provisions of the North Carolina Code of Judicial Conduct. These are the ones that are most likely:

Canon 1

A judge should uphold the integrity and independence of the judiciary.

Problems may arise from undignified photographs or comments posted on the judge's social network page or similar similar inappropriate material posted by someone else on the judge's page.

Canon 2

A judge should avoid impropriety in all the judge's activities.

A. *A judge should respect and comply with the law and should conduct himself/herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.*

Problems may arise from undignified photographs, comments.

B. *A judge should not allow the judge's family, social or other relationships to influence the judge's judicial conduct or judgment.*

An appearance of influence may be created by individuals or organizations being listed as "friends," "likes," "fans," or "interests" of the judge or otherwise linked. There also are risks with friends posting comments on the judge's page expressing views on legal or political issues, or the judge being identified as a friend on the page of someone else who is expressing a view about a case or legal or political issue.

B. *cont. The judge should not lend the prestige of the judge's office to advance the private interests of others . . .*

Problems may arise from entries on the judge's page indicating that the judge "likes" or is a "fan" of a particular store, restaurant, organization, and so forth, or including that particular entity in the judge's "interests," or the judge appearing as a friend in a network created for the entity. The same issues may come from including a link to a store, restaurant, organization, and so forth on the judge's page.

B. *cont. . . . nor should the judge convey or permit others to convey the impression that they are in a special position to influence the judge.*

Problems may arise from identifying a person or organization as a friend of the judge, including a link to a person or organization on the judge's page, or an indication on the judge's page that the judge "likes" or is a "fan" of a person or organization, or including that person in the judge's "interests."

Canon 3

A judge should perform the duties of the judge's office impartially and diligently.

A. Adjudicative responsibilities.

2. *A judge should maintain order and decorum in proceedings before the judge.*

A problem may arise when a judge uses a social networking site during court or posts comments on social media.

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

Problems may arise from undignified remarks posted by the judge on the judge's page or on others' pages, or from undignified or discourteous remarks posted by others on the judge's page and not removed. There also may be problems from inappropriate

remarks about cases, litigants, and lawyers posted on social network pages of the judge's assistant, clerk, and so forth, or posted by those employees on others' pages.

4. *A judge should accord to every person who is legally interested in a proceeding, or the person's lawyer, full right to be heard according to law, and, except as authorized by law, neither knowingly initiate nor knowingly consider ex parte or other communications concerning a pending proceeding.*

   Problems may arise from comments or questions about a case posted on the judge's page or directed to the judge.

6. *A judge should abstain from public comment about the merits of a pending proceeding in any state or federal court dealing with a case or controversy arising in North Carolina or addressing North Carolina law and should encourage similar abstention on the part of court personnel subject to the judge's direction and control.*

   Problems may arise from comments made by a judge on social media. Problems also may result from comments or questions about a case posted by someone else on the judge's page and not removed by the judge, and from comments about a case posted on someone else's site linked to the judge's page.

C. Disqualification

1. *On motion of any party, a judge should disqualify himself/herself in a proceeding in which the judge's impartiality may reasonably be questioned, including but not limited to instances where:*

   (a) *The judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceedings . . . .*

   Problems may arise from comments posted by the judge on the judge's social networking page, or comments posted by others and not removed by the judge, or links to affected individuals or organizations appearing to indicate a bias by the judge.

Canon 5

A judge should regulate the judge's extra-judicial activities to ensure that they do not prevent the judge from carrying out the judge's judicial duties.

B. Civic and charitable activities.

3. *A judge may be listed as an officer, director or trustee of any cultural, educational, historical, religious, charitable, fraternal or civic organization. A judge may not actively assist such an organization in raising funds but may be listed as a contributor on a fund-raising invitation.*

   Problems may arise from comments by the judge on an organization's social network page, supporting the organization and endorsing it, when the page is used for fund-raising.

Canon 7

A judge may engage in political activity consistent with the judge's status as a public official.

C. *Prohibited political conduct. A judge or candidate should not:*

1. *solicit funds on behalf of a political party, organization, or an individual (other than himself/herself) seeking election to office, by specifically asking for such contributions in person, by telephone, by electronic media, or by signing a letter, except as permitted under subsection B of this Canon or otherwise within this Code;*

2. *endorse a candidate for public office except as permitted under subsection B of this Canon or otherwise within this Code. . . .*

   Problems may arise from appearing as a "friend" or "fan" on a candidate or political organization's social network page; from a judge's page listing a candidate as a "like" or "interest" of the judge; or from favorable comments posted by the judge on a candidate or political organization's social network page.

North Carolina Ethics Opinion

The North Carolina State Bar's 2014 Formal Ethics Opinion 8—go to "Adopted Opinions," choose the "Select by Number" option, then scroll down to 2014 Formal Ethics Opinion 8 near the bottom of the list—adopted on January 23, 2015, is technically an opinion about lawyers' conduct. It is tied to lawyers' interactions with judges on social networking sites, however, and, therefore, is instructive to judges as well. Although the opinion is about LinkedIn, its principles apply to any social networking site.

LinkedIn members create a profile page which may include a list of contacts, other members with whom the person has a relationship. Having such a connection allows one member to view information on the other member's page, post comments, and write endorsements and recommendations. The State Bar opines that lawyers on LinkedIn may accept invitations from judges to be listed as connections, and may send such invitations to judges, but such activity always is subject to the Code of Professional Responsibility's prohibition against conduct that implies an ability to influence the judge. In other words, the State Bar views electronic social networking the same as live interaction—it is acceptable for lawyers to have social interactions with judges, but they must avoid the impression that it gives them particular sway with the judge. The opinion says that if the judge's invitation to connect on LinkedIn comes while the lawyer has a matter pending before the judge the lawyer should decline—and may explain to the judge the reason for doing so—until the matter is concluded.

The opinion goes on to say that a lawyer on LinkedIn may endorse a judge's skills and recommend the judge, again subject to the limitation that the lawyer may not imply an ability to influence the judge. A LinkedIn lawyer may not accept a judge's endorsement or recommendation for display on the lawyer's page, because doing so would create the impression of partiality by the judge, which would violate the Code of Judicial Conduct. If lawyer A endorses and recommends lawyer B and then lawyer A becomes a judge, lawyer B must remove the endorsement and recommendation from lawyer B's profile page.

North Carolina Disciplinary Case

North Carolina has one public sanction issued against a judge for an incident involving the use of social media. It is an April 2009 reprimand issued by the Judicial Standards Commission. The judge and lawyer had decided at the beginning of a child custody/support proceeding to friend each other on Facebook and then exchanged comments about the case on the social network. That contact led to the reprimand for ex parte communication. The judge was also reprimanded for his independent research on the parties, without informing either side, through his visits to the wife's business website, a photography business where she posted both photographs and poems.

North Carolina Judicial Standards Commission Advice

The North Carolina Judicial Standards Commission has not addressed social media issues formally other than through the disciplinary case just described. However, Chris Heagarty, when executive director of the commission, said in 2015 that the commission's informal advice follows the majority of other states and the American Bar Association. He summarized it this way: "A judge may participate in electronic social networking, but as with all social relationships and contacts a judge must comply with the relevant provisions of the Code of Judicial Conduct and avoid any conduct that would undermine the judge's independence, integrity, or impartiality, or create a reasonable appearance of impropriety."

Other Jurisdictions' Ethics Opinions

Questions about judges joining social networks, becoming social network friends with lawyers and law enforcement officers, and related issues now have been addressed by over a dozen state ethics committees for judges, by the United States courts, by the American Bar Association, and also by public disciplinary action and appellate court decisions in several jurisdictions. Although the number of opinions, disciplinary actions, and appellate decisions is still small, there seems to be a consensus building on several issues. There appears to be general agreement among the ethics committee, for example, regarding the following:

1. Judges may join on-line social networks.
2. Social networks create opportunities and temptations for ex parte communication that judges must be careful to avoid.
3. Judges are still judges when posting materials on their social networking pages and need to realize that the kinds of comments and photographs posted by others may not be appropriate for them.
4. Judges need to avoid on-line ties to organizations that discriminate, just as they are prohibited from joining such organizations.
5. Judges also need to avoid on-line ties to organizations that may be advocates before the court.
6. Judges need to avoid posting comments on social network sites or taking other actions on such sites that lend the prestige of the judge's office to the advancement of a private interest.

7. Social networks, with their instant communication, informality, and lightning quick jump to the public realm, are a danger zone for judges who are obligated to always be dignified and circumspect.

The ethics committees divide most sharply on the issue of a judge accepting a lawyer as a friend on a social network. The majority of the states opining on the issue conclude that friending does not by itself establish such a relationship as to imply that the lawyer has special influence and does not by itself require the judge to recuse from cases with that lawyer, although they recognize that a social network friendship may create such problems when combined with other circumstances. In the view of those states, being a friend of a judge on a social network is no different than being a friend in person and does not by itself lead to automatic recusal. On the other hand, the ethics committees of four states (Connecticut, Florida, Massachusetts, Oklahoma) have concluded that a social network friendship is sufficiently likely to create the impression of special influence that it should be barred. Although such an impression of favoritism may be mistaken, the approach of those ethics committees is to err on the side of caution when it comes to appearances of fairness.

Several of the ethics opinions deserve particular attention. The Utah opinion is the most complete, describing in detail a variety of social media situations a judge might face. The California opinion is noteworthy for its discussion of the different kinds of social networks, explaining that the application of ethics rules may vary depending on whether the network is one for relatives and close personal acquaintances or is one for people with looser ties. The Florida opinions offer the strongest assertion of the minority view that judges and lawyers simply should not be social media friends.

In addition to the ethics issues, judges should be aware of the security issues that come with social networking. A judge's page on Facebook or other social network can provide lots of information to someone who is dissatisfied with the judge's decisions and wants to do harm.

Below are short summaries of the individual state ethics opinions, public disciplinary actions and appellate decisions, in alphabetical order of the states, followed by the ethics opinions for the United States judiciary and the ABA opinion.

Alabama

The Alabama Court of the Judiciary in Case No. 42, *In the matter of Henry P. Allred, District Judge Walker County* (Mar. 22, 2013), reprimanded and censured a district judge for making public comments on his Facebook page about a pending contempt proceeding against a lawyer, and requesting that Facebook friends spread the message "far and wide." He also emailed the same comments and request to all Alabama state court judges.

Arkansas

In *Judicial Discipline and Disability Commission v. Maggio*, 2014 Ark. 366, 440 S.W.3d 333 (2014), the Arkansas Supreme Court removed a district judge for comments posted on a public electronic forum and for involvement in "a hot-check case." The comments were made on a "tigerdroppings" site for LSU athletic fans under the screen name "geauxjudge." Although the opinion does not describe the comments, other sources indicate that "geauxjudge" made glaringly offensive sexist remarks—e.g., "Women look at 2 bulges on a man, one in the front of the pants or second one in the back pocket"—and also disclosed information about an adoption handled by a fellow judge for the actress Charlize Theron.

Arizona

Advisory Opinion 14-01 of the Arizona Supreme Court Judicial Ethics Advisory Committee, issued August 5, 2014, is one of the lengthiest and most comprehensive opinions, covering a range of social media topics in its thirteen pages. Among its conclusions are the following:

- A judge may use LinkedIn but may not use the site to recommend a lawyer who regularly appears before the judge, nor use the judge's title to recommend any other professional. A judge may recommend a former law clerk to a specific prospective employer.
- A judge who maintains a blog must be careful to avoid statements that could be perceived as prejudiced or biased, and must refrain from comments that require frequent recusal. A judge should assume that a statement made on social media, even though intended only for close acquaintances, will end up in public.
- A judge on Facebook should avoid discussions about issues that may come before the court, including postings by others.
- Judges are not required to automatically disqualify themselves from cases in which lawyer Facebook friends appear, but they should evaluate each situation individually. Recusal is more likely when the lawyer is in the "close friend" category.
- If a Facebook friendship raises concerns sufficient for disqualification, simply de-friending is not an adequate response.
- Judges need to be aware of the potential problems social media present with respect to ex parte communications and independent investigations of facts in a case.
- Although a judge may "like" or "follow" an organization on Facebook, the judge will have to consider whether to disqualify if that organization appears as a litigant.
- A judge may not be a social networking friend of a candidate's campaign Facebook page, nor "like" that page, because that would appear to be endorsing the candidate.
- A judge may not be a friend of the Facebook page of the sheriff or local law enforcement, nor "like" such a page, since those officers appear regularly before the court.

The Arizona opinion also discusses the ethical obligations of judicial employees with respect to social media. The advice generally is the same as for judges with the additional admonition that judicial employees should advise the judges for whom they work of any comments made through social media, or any friendships of lawyers or litigants, that raise questions of impartiality.

California

Opinion 66 from the Judicial Ethics Committee of the California Judges Association, issued on November 23, 2010, states the following:

- A judge may join a social network, even one that includes lawyers who may appear before the judge, but the judge must disclose the social network connection and must unfriend the lawyer when the lawyer has a case before the judge.
- Whether a judge may friend a lawyer depends on the nature of the social network and whether the lawyer has a case before the judge. If the social network is one limited to the judge's relatives and a few close colleagues and it is used for exchanging personal information, for example, the likelihood will be greater that the lawyer appears to have special influence. There is much less risk, by comparison, when the social network involves

individuals and organizations interested in a particular subject or project, say a sports team or a charitable project, and the exchanges are limited to that topic.
- Regardless of the nature of the social network, the judge should always disclose that the judge has a social network tie to a lawyer and must recuse from any case in which a friend from the first kind of network, the more personal one, is participating. Even for the second kind of social network, the less personal one, the judge should unfriend the lawyer when the lawyer appears in a case before the judge.
- A judge must monitor comments posted by others on the judge's page and must delete or hide from public view comments that would create the appearance of bias or must otherwise repudiate comments that are offensive or demeaning.
- A judge may not create links to political organizations or others that would amount to impermissible political activity.
- A judge must not lend the prestige of the office to another by posting any material that would be construed as advancing that other person's interest.
- Judges need to be familiar with a social network's privacy settings and how to modify them. And the judge should be aware that other participants in the social network may not guard privacy as diligently and may thereby expose the judge's comments, photographs, and so forth to others without the judge's permission.

Connecticut

The Connecticut Committee on Judicial Ethics issued Informal Opinion 2013-06 on March 22, 2013. It states the following:

- Judges may participate in social networking sites though they are "fraught with peril for Judicial Officials because of the risk of inappropriate contact with litigants, attorneys, and other persons unknown to the Judicial Officials and ease of posting comments and opinions . . . ."
- A judge should not friend lawyers who may appear before the judge, nor law enforcement or social workers or others who regularly appear in court.
- A judge should disqualify from a case in which a social networking relationship with a lawyer is likely to result in bias or prejudice.
- Judges must maintain dignity with all comments, photographs, and other information shared on social media.
- Judges may not maintain social media interactions with individuals or organizations that would affect confidence in judicial independence or suggest they are in a position to influence the judge.
- A judge should not use likes or endorsements to advance the interests of the judge or others.
- A judge should not use social media to comment on pending matters.
- A judge should not view parties' or witnesses' pages and not use such sites to obtain information about a matter before the judge.
- A judge should not give legal advice on social media.
- A judge should not use social media to endorse or oppose candidates, to like or create links to political organizations, or to comment on political topics.
- A judge should be aware of the contents of the judge's social media page and its privacy and security features.

Florida

The Florida Supreme Court's Judicial Ethics Advisory Committee's Opinion 2009-20, issued on November 17, 2009, received a great deal of publicity because it was one of the earliest opinions and because it concluded that judges may not add lawyers as friends on a social network. The opinion states the following:

- A judge may join a social network site and post comments and other materials so long as the material does not otherwise violate the Code of Judicial Conduct.
- A judge may not add as friends lawyers who appear before the judge, nor allow lawyers to add the judge as a friend. The judge's acceptance of a lawyer as a friend would convey the impression, or allow others to convey the impression, that a person is in a special position to influence the judge, even if that is not true.
- A judge's election campaign committee may post material on a social network and allow lawyers and others to list themselves as "fans," provided the judge or campaign committee did not control who could list themselves in that manner.

Opinion 2010-04, issued March 19, 2010, advises the following:

- A judicial assistant may add as Facebook friends lawyers who may appear before the judge for whom the assistant works, so long as the assistant's Facebook activity is conducted independently of the judge and does not mention the judge or court.

Opinion 2010-05, also issued on March 19, 2010, states the following:

- Based on the wording of the Florida Code of Judicial Conduct specifying which portions apply to candidates, candidates for judicial office are not subject to Opinion 2009-20 above and, thus, may add as Facebook friends lawyers who are likely to appear before them if elected.

Opinion 2010-06, issued on March 26, 2010, revisits some of the issues addressed in Opinion 2009-20, and concludes the following:

- A judge who is a member of a voluntary bar association which uses a Facebook page may use that page to communicate with other members, including lawyers, about the organization and about non-legal matters, and does not have to "de-friend" lawyer members who might appear before the judge. The organization, not the judge, controls the Facebook page and decides which friend requests to accept and reject.
- As stated in the original opinion, a judge may not friend a lawyer even if the judge places a disclaimer on the judge's Facebook page stating (1) that the judge will accept as a friend anyone the judge recognizes or who shares a number of common friends, (2) the term "friend" does not mean a close relationship, and (3) no one listed as a friend is in a position to influence the judge.
- Likewise, a judge may not friend a lawyer even if the judge's Facebook page states that the judge will accept as a friend any lawyer who requests to be added. The proposed disclaimers fail to cure the impression that a lawyer listed as a Facebook friend has special influence; lawyers who chose not to use Facebook would not be listed as friends; and there is no assurance that someone viewing the page would see or read the disclaimer.

Opinion 2010-28, issued July 23, 2010, states that a judicial candidate should not host a website or Facebook page promoting the campaign. Because the Florida code prohibits a candidate

or judge from personally soliciting campaign funds the website or Facebook page should be established and maintained by a campaign committee instead.

In Opinion 2012-12, issued on May 9, 2012, the Florida committee reiterated that the 2009 opinion about not friending lawyers on Facebook applies to other social media sites as well, including LinkedIn:

- A judge who is a member of LinkedIn may not add lawyers who appear before the judge as "connections"; to do so creates the impression that the lawyer is in a special position to influence the judge.

In *Domville v. State*, ___ So. 3d ___, 2012 WL 3826764 (Fla. Dist. Ct. App., 4th Dist., 2012)—the third opinion from the end of the 9/5/12 opinions listed in the link—the Florida District Court of Appeal, Fourth District, relying on the November 2009 ethics opinion discussed above, held that the trial court should not have dismissed a motion that the judge disqualify himself from hearing a case in which the prosecutor was a Facebook friend of the judge. Based on the ethics opinion, the allegation about the Facebook friendship was sufficient to create a fear that the defendant would not receive a fair and impartial trial.

In *Chace v. Loisei*, ___ So. 3d ___, 39 Fla. L. Weekly D221, 2014 WL 258620 (Fla. Dist. Ct. App., 5th Dist., 2014)—the last opinion in the list of 1/20/14 opinions in the link—the Florida District Court of Appeal, Fifth District, held that the trial judge should have disqualified herself from hearing a divorce case after the judge requested that the petitioner wife friend her on Facebook and the wife did not respond. The friend request put the wife in the impossible position of either agreeing to engage in ex parte communications with the judge or run the risk of offending the judge by not accepting the friending request.

Georgia

On March 18, 2013, the Georgia Commission on Judicial Qualifications publicly reprimanded a county judge and suspended him for sixty days without pay in *In re: Inquiry Concerning Judge J. William Bass, Sr.*, Docket No. 2012-31. His numerous ethical violations included ex parte communications on Facebook with a woman who had contacted the judge about her brother's pending drunk driving trial. The judge's indiscretions included advising the woman how to get the matter to his court so he could handle it.

Indiana

On February 10, 2015, in *In re the Honorable Dianna L. Bennington, Judge of the Muncie City Court* (No. 18S00-1412-JD-733), the Indiana Supreme Court accepted an agreement by which a judge resigned and agreed to never serve again in any judicial office. The ethical violations were numerous and serious; among the lesser offenses was the comment the judge posted on the Facebook page of the father of her twins, needling him for not paying child support.

Kentucky

Formal Judicial Ethics Opinion JE-119 of the Ethics Committee of the Kentucky Judiciary—scroll down the list of opinions in the link to JE-119—issued on January 10, 2010, says the following:

- Judges may join social networking sites such as Facebook, LinkedIn, and Twitter, and may be friends with lawyers, law enforcement officers, and others who appear before them, with limitations.
- Whether a judge must disclose a social relationship or disqualify from a case depends on the closeness of the relationship, but being designated a friend on a social network does not by itself convey an impression of a special relationship. "Friend," "fan," and "follower" are social media terms of art that do not carry the ordinary sense of those words.
- Judges are not free to participate in social media the same as the general public. Personal information, photographs, and comments that might be appropriate for someone else may not satisfy the higher standards for judges.
- Judges also need to be cautious to avoid ex parte communications and to resist the use of social media for the independent investigation of the facts of a case.

On July 21, 2014, in *In re Dana M. Cohen*—see the list of "Public Actions" in the lower right section of the link—the Kentucky Judicial Conduct Commission publicly reprimanded a candidate for district judge for "liking" a Facebook posting that endorsed a candidate for public office and for contributing to the candidate.

Maryland

Opinion 2012-07, issued June 12, 2012, by the Maryland Judicial Ethics Committee—scroll down to opinion 2012-07 in the list on the link—says the following:

- The mere fact of a social connection—friend—on a social networking site does not create a conflict requiring a judge to disclose the social relationship or disqualify, just as the mere existence of a real world friendship with a lawyer does not in itself disqualify the judge from cases involving that lawyer.
- Whether a judge must disclose a relationship or disqualify depends on the nature of the social relationship, not the medium in which it takes place.
- Judges are admonished to be aware of the perils of social media, especially with respect to maintaining the dignity of the office and avoiding ex parte communications.

Massachusetts

CJE Opinion No. 2011-6, issued by the Committee on Judicial Ethics of the Massachusetts Supreme Judicial Court on December 28, 2011, states the following:

- A judge may join a social network site but may not friend any lawyer who appears before the judge. "Stated another way, in terms of a bright-line test, judges may only 'friend' attorneys as to whom they would recuse themselves when those attorneys appeared before them." Friending creates the impression that the lawyer is in a position to influence the judge.
- Judges should not identify themselves as judges on the social network site, nor allow others to do so. Such identification uses the prestige of the office to advance private interests and creates the impression that others are in a special position to influence the judge.
- Judges are warned to avoid posting embarrassing photographs and ex parte communications.
- Judges may not comment on pending cases on social media, join Facebook groups of prohibited organizations, nor use social media for political endorsements.

New Mexico

On February 13, 2015, the New Mexico Supreme Court in *In re Hon. Phillip J. Romero, Pro Tempore Judge* (No. 30,316)—see the item listed as 02-13-15 under "Recent Commission Action and Notices" in the link—accepted the stipulation reached with the Judicial Standards Commission that the judge retire permanently from office and be barred from future judicial office for publicly endorsing candidates and posting their campaign materials on Facebook, agreeing not to do so, and then doing so again.

New York

Opinion 08-176 of the New York Advisory Committee on Judicial Ethics, issued on January 29, 2009, states the following:

- There is nothing fundamentally different about a judge socializing through a social network and socializing in person, and nothing fundamentally different about communicating electronically rather than face to face.
- A judge needs to be aware of the public nature of comments posted on a social network site, the potential of creating the appearance that a lawyer who friends the judge will have special influence, and the likelihood that people might use the judge's social network page to seek legal advice.
- When combined with other circumstances, friending on social media can lead to the appearance of a close social relationship requiring disclosure or recusal.

Opinion 13-39, issued on May 28, 2013, states the following:

- A judge is not required to disqualify from a criminal case just because the judge is Facebook friends with the parents of some minors affected by the defendant's conduct, if the social relationship is mere "acquaintance." As described in earlier opinions, disclosure or disqualification is not required unless there is a "close social" or "close personal" relationship.
- Facebook friendship by itself does not establish grounds for calling a judge's impartiality into question nor create an appearance of impropriety.
- The judge should prepare a memorandum for the file stating the basis for concluding that recusal is not necessary, in case questions arise later.

Opinion 13-126, issued on October 24, 2013, concerns political activity by judicial candidates and states the following:

- During the "window period" allowed by the judicial ethics code for New York judges to engage in political activity, a judge who is a judicial candidate may include a link to the judge's Facebook campaign page as part of the signature on personal email.
- Because New York prohibits judges from personally soliciting campaign contributions, but allows solicitation of non-financial assistance, the judge's Facebook link may request only that the reader "like" or "friend" the site.
- The judge may not include the Facebook campaign link on the judge's court system email.

Opinion 14-05, issued March 13, 2014, concerns the use of Facebook pages to display court information and states the following:

- A local court should not establish a website on Facebook if that site will include commercial advertisements. The appearance of such advertisements on the site may create the appearance that the court is subject to outside influences, undermining the court's dignity and independence.

Ohio

Opinion 2010-7, issued December 3, 2010, by the Ohio Supreme Court's Board of Commissioners on Grievances and Discipline—the last in the list of 2010 opinions in the link—states the following:

- Because there is no prohibition on a judge being a friend of a lawyer who appears before the judge, friending on-line cannot be an ethics violation by itself.
- There are special risks associated with social networks for judges.
- A judge must be careful to maintain the dignity of the office in every comment and photograph posted on social media.
- A judge should not interact on social networks with individuals or organizations whose advocacy or interest in matters before the court would raise questions about the judge's independence.
- A judge should not make any comments on a site about any matter pending before the judge.
- A judge should not use the social network for ex parte communications.
- A judge should not undertake independent investigation of a case by visiting a party's or witness's page.
- The judge must consider whether interaction with a lawyer on a social network creates any bias or prejudice concerning the lawyer or a party.

Oklahoma

Judicial Ethics Opinion 2011-3, issued by the Oklahoma Judicial Ethics Advisory Board on July 6, 2011, states the following:

- While a judge may participate in social networking sites the judge should not be social network friends with lawyers, law enforcement officers, social workers or others who may appear in the judge's court. Such a relationship can convey the impression that the person is in a special position to influence the judge. It is immaterial whether the person actually is in such a position; it is the possible impression that matters. "We believe that public trust in the impartiality and fairness of the judicial system is so important that [it] is imperative to err on the side of caution where the situation is 'fraught with peril.'"

South Carolina

Opinion 17-2009, issued in October 2009 by the South Carolina Advisory Committee on Standards of Judicial Conduct, states the following:

- A magistrate may join Facebook and be friends with law enforcement officers and court employees so long as the site is not used for discussion of judicial business.

South Dakota

In *Onnen v. Sioux Falls Independent School District*, 2011 S.D. 45 (2011)—use the link to go to 2011 opinions and select opinion 45—the South Dakota Supreme Court held that the trial judge did not have to recuse himself from a case just because he had received a birthday greeting in Czech on Facebook from a witness the judge did not know personally.

Tennessee

Advisory Opinion 12-01, issued October 23, 2012, by the Tennessee Judicial Ethics Committee—from the list of opinions in the link, select opinion 12-01—advises the following:

- Judges may participate in social media but must do so with caution and with the expectation that their use will be scrutinized by others.
- Judges should note the cautions expressed in other states' opinions. Because of constant changes in social media, the committee cannot be specific as to allowable or prohibited activity.

In *State v. Forguson*, ___ Tenn. ___, 2014 WL 631246 (2014)—available by using the search function on the link—the Tennessee Court of Criminal Appeals held that a judge was not disqualified from hearing a criminal case just because of his Facebook friendship with a confidential informer who was a witness at trial. The defendant offered no other evidence of the nature of the relationship between the judge and witness nor of their interactions, and the judge stated that the witness was someone he had known all his life in the small community and was someone he had formerly prosecuted and seen in court in child support matters.

In *State v. Madden*, ___ Tenn. ___, 2014 WL 931031 (2014)—available by using the search function on the link—the Tennessee Court of Criminal Appeals held that the trial judge was not disqualified from hearing a case based on the judge's Facebook connections to the Middle Tennessee State University women's basketball team, of which the victim was a member, nor was the judge disqualified by a Facebook friendship with a coach who was a witness. The defendant also was a Middle Tennessee student and the coach was one of over 1,500 Facebook friends of the judge, and there was no other showing of bias. The court suggested, however, that Tennessee ought to consider restricting on-line friendships between judges and lawyers and witnesses likely to appear before them.

Texas

In *Youkers v. State*, 400 S.W.3d 200 (Tex. 5th Ct. App., 2013)—scroll down the list of opinions in the link to "Criminal Causes Decided"—the Texas Court of Appeals, Fifth District, held that the trial judge was not required to disqualify from the trial of defendant just because of the judge's Facebook friendship with the father of the victim or an unsolicited communication from the father. The judge stated he was a "friend" of the father only because they ran for office at the same time; he had no other relationship with the father; and when he received the Facebook message from the father about the defendant (actually seeking leniency for the defendant), he advised the father it was an improper ex parte communication which he could not read or consider.

On April 20, 2015, the Texas State Commission on Judicial Conduct admonished a district judge in *Public Admonition and Order of Additional Education, Honorable Michelle Slaughter,* CJC No. 14-0820-DI & 14-0838-DI—on page 49 of the FY 2015 "Public Sanctions" on the

link—for posting Facebook updates and comments on a high profile trial and for Facebook comments about issues and parties in other cases before her.

Utah

Informal Opinion 12-01, issued August 31, 2012, by the Utah Courts Ethics Advisory Committee—use the search option to find 2012 opinions—states the following:

- A judge may be a social media friend with lawyers who appear before the judge. Being a Facebook or other social media "friend" does not by itself indicate that the person has a close personal relationship.
- A judge is not required to recuse from a lawyer's case just because they are social media friends; it does not by itself create the impression of being in a special position to influence the judge. Whether the judge should recuse depends on the nature of the relationship, including the frequency and substance of their contacts through social media.
- Judges may identify themselves as judges on social media.
- A judge may appear in robes on Facebook so long as the photograph is taken in an appropriate setting and is not displayed in a way that undermines the dignity of the office.
- A judge may "like" events, companies, institutions, and so forth, on Facebook.
- A judge is not required to recuse from a case just because it involves a party the judge "likes" on social media. Such social media notations are not noticeably different from a judge displaying preferences through the car the judge drives, the church the judge attends, or the bank the judge uses.
- A judge may be a friend of the personal social media page of a political candidate, but not a friend on the person's campaign page. Being a friend on the campaign page suggests endorsement. And the judge must be careful to avoid posting comments on the candidate's personal page that suggest endorsement.
- A judge may be a social media friend with elected officials.
- A judge may "follow" or "like" law firms. Such designation does not by itself create an appearance of bias.
- A judge may follow on Twitter a lawyer who might appear before the judge. If the judge were to start receiving ex parte communications, however, the judge could no longer follow that lawyer.
- A judge may follow a legal or political blog that is also followed by lawyers and politicians. Judges often read the same legal materials as do lawyers and politicians.
- A judge is not required to monitor comments on a webpage of an individual or entity with whom the judge is associated, to avoid association with material that might reflect poorly on the judiciary. If the judge becomes aware of such content, however, the judge may have to disassociate from the site.
- A judge should not use a judicial title when posting a restaurant review or making similar comment, to avoid creating the appearance that the judge is lending the prestige of the office to a for-profit entity.
- A judge may use a "screen name" or pseudonym when posting comments, if allowed by the site, but should assume that all viewers will know the identity of the judge and should avoid inappropriate comments.

- Judges are not required to always identify themselves as judges on social media to avoid ex parte communications. But if a judge does receive an inappropriate ex parte communication, the judge may need to disclose it or disqualify.
- A judge may post content on social media about the judge's personal interests and pursuits.
- A judge should not post comments about legal issues that may come before the judge, that appear to be taking sides on a controversial legal or political topic, or that may be considered offering legal advice.
- A judge may maintain a profile on LinkedIn, including that the person is a judge and the court on which the judge serves.
- A judge may join LinkedIn law-related groups.
- A judge may not "recommend" on LinkedIn a lawyer who regularly appears before the judge; it may be perceived as endorsement of the person's skill and credibility. But a judge may recommend lawyers who do not appear before the judge or individuals in other professions. A judge may recommend someone who has worked for the judge, such as a law clerk.
- A judge may ask others on LinkedIn to recommend the judge for a judicial position but not for a non-judicial position, such as a law firm, while the judge is still on the bench.
- A judge's recommendation on LinkedIn does not by itself require the judge to disqualify from a proceeding involving that person. A judge need not recuse because of recommending a former law clerk, but will need to disqualify from a case involving a lawyer the judge has recommended based on the judge's interactions with the lawyer in court.

West Virginia

On March 14, 2014, the West Virginia Judicial Investigation Commission publicly admonished a magistrate in *In re Richard D. Fowler, Former Magistrate of Mercer County* (Complaint No. 125-2013), for improper communications with a woman involved in cases before the judge. The communications included multiple sexually suggestive messages sent over Facebook. Because the magistrate already had resigned and pledged not to seek office again, the commission took no action other than the admonishment.

Judicial Conference of the United States

The federal judiciary's Committee on Codes of Conduct issued its Advisory Opinion No. 112 in March 2014, following up on its 2011 Resource Packet for Developing Guidelines on Use of Social Media for Judicial Employees. The Advisory Opinion states the following:

- A judge should not use social media to advance the private interest of another by identifying as a supporter of a restaurant or other establishment.
- A judge should not post comments on a blog that endorse political views, demean the prestige of the office, speak to issues that may arise before the court, or create the impression that another has unique access to the court.
- Social media exchanges with lawyers who appear before the judge—such as "wall posts" and tweets —can raise an issue of appearance of impropriety even if they do not concern

litigation and can also create the impression that the person is in a special position to influence the judge.
- Social media exchanges with lawyers must be scrutinized to see that they do not constitute ex parte communications.
- Issues arise when a judge identifies as a "fan" of an organization that frequently litigates before the court.
- Issues may arise when a judge circulates a fundraising appeal to a large group of social network friends that includes lawyers who practice before the court.
- Judges should not include their court email addresses in social media.
- A judge should assume that all social media communication will be public and should not detract from the dignity of the office by posting inappropriate photographs, videos, or comments.
- A judge should not appear to be endorsing a candidate by "liking" or becoming a "fan," posting photographs that affiliate the judge with a political candidate, party, or event.

American Bar Association

The American Bar Association issued Formal Opinion 462 on February 21, 2013. As would be expected from the ABA, the document identifies issues and cites the state bar opinions more than it provides specific direction. While generally saying that an electronic social media relationship is subject to the same analysis as relationships formed in person, the ABA warns of the dangers inherent in electronic communication—retransmission by others without permission, wider dissemination, a longer life, and an increased likelihood of comments being taken out of context.

The ABA opinion does not address specifically whether a judge may friend lawyers and others, instead referring to the various state opinions, but it says the issues of whether a judge should disclose an electronic social media relationship and should disqualify should be analyzed the same as with in-person professional or personal relationships. The opinion does say that the "open and casual" nature of electronic social media communications means a judge seldom will have an affirmative duty to disclose such a connection. Nor does a judge need to search all social network connections if the judge does not have any specific knowledge of a connection that arises to the level of a problematic relationship.

As for social networks and campaigning, the opinion warns of the danger of appearing to endorse a candidate by clicking an "approve" or "like" button on the candidate's social media site. It also advises judges to pay close attention to privacy settings so that a permissible private expression of opinion about a candidate does not become public.