

Ethics for Magistrates
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- 1) Magistrate is public officer—not a regular employee
 - a) Distinction between officer and employee. As a public officer, magistrates:
 - i) Take oath of office
 - ii) Have terms of office to promote independence
 - iii) Exercise sovereign power of the state
 - iv) Are subject to limited removal procedure
 - (1) Discipline is by judicial proceeding, not by hiring authority
 - (a) Grounds are statutory
- 2) Disciplinary procedure
 - a) Impeachment—very, very rare
 - b) Removal procedure GS 7A-173
 - i) Complaint reviewed by chief district judge
 - (1) Probable cause standard
 - (2) May order suspension pending hearing, with pay
 - ii) Hearing by superior court judge
 - (1) “Grounds for removal are the same as for a judge” GS 7A-173, 7A-376, *State v. Greer*, 308 NC 515; *In Re Kiser*, 126 NC App. 206
 - (a) Willful misconduct in office
 - (i) Improper and wrong conduct acting in official capacity;
 - (ii) Done intentionally and knowingly (or with gross unconcern for the conduct);
and
 - (iii) In bad faith.
 - (iv) Examples—dishonesty, corruption, or knowing misuse of office, or to accomplish purpose beyond the legitimate exercise of his or her authority. *In Re Edens*, 290 NC 299; *In Re Stuhl*, 292 NC 239; *In Re Nowell*, 293 NC 235
 1. Not limited to time in court
 2. Improper sexual activity between judge and defendant included
 3. Generally criminal charges against judge will also constitute willful misconduct
 - (b) Willful and persistent failure to perform his duties
 - (c) Habitual intemperance
 - (d) Conviction of crime involving moral turpitude
 - (e) Conduct prejudicial to administration of justice
 - (i) Less serious than willful misconduct

- (ii) Often taken in good faith, but still appears to objective observer that conduct is un-judicial and lowers public esteem for the office
 - (iii) Motive doesn't matter; conduct does
 - (iv) Personal benefit not required
 - (v) Can't use inexperience or lack of training
 - (vi) Private matters also covered
 - (vii) *Edens, Stuhl, Nowell, supra; In Re Crutchfield, 289 NC 597; In Re Peoples, 296 NC 109; In Re Martin, 295 NC 292*
- (2) Remedy for violation
 - (a) Judges may be censured, and may lose retirement benefits if removed
 - (b) Removal is only remedy for magistrates and is mandatory if grounds found to exist
 - GS 7A-173; *Kiser*
 - (i) *Does not involve retirement forfeiture*
- 3) Relationship of Code of Judicial Conduct to magistrate discipline
 - a) Code is only applicable directly to judges
 - b) "A violation of the Code of Judicial Conduct may be deemed conduct prejudicial to the administration of justice that brings the judicial office in disrepute, or willful misconduct in office, or otherwise as grounds for disciplinary proceedings . . . No other code or proposed code shall be relied upon in the interpretation and application of this Code of Judicial Conduct."
 - Preamble to Code of Judicial Conduct*
 - c) Since magistrates subject to same standard of conduct in removal hearing, standards of the Code apply to magistrates
- 4) Code of Judicial Conduct
 - a) Purpose is to provide certainty, accountability and professional identity ; can be aspirational or prohibitive or both
 - b) Also provides safe harbors in difficult areas
 - c) Newly amended to make less aspirational and more like a code
 - d) Divided into "Canons"; most directly relevant are:
 - i) Canon 1—Uphold integrity and independence of the judiciary
 - ii) Canon 2—Avoid impropriety in all activities
 - (1) No longer the appearance of impropriety
 - (2) Use of prestige of office; personal references; character evidence; membership in organizations
 - iii) Canon 3—Impartiality and diligence
 - (1) Order, dignity, courtesy
 - (2) Ex parte communications
 - (a) Prohibited in pending cases, unless authorized by law
 - (3) Promptness
 - (4) Comments on merits of pending cases
 - (5) Administrative duties and duty to report violations
 - (6) Recusal
 - iv) Canons 4 and 5—Outside activities to improve the system or the community

- (1) Don't do it if it casts doubt on your ability to be impartial
- (2) Community activities, but no fundraising
 - (a) Organization can't be frequent litigator
- (3) Financial activities
 - (a) Business dealings
 - (i) Don't do if interferes with duties as magistrate, or exploit judicial position or frequently involves interaction with litigants or lawyers who appear in court
 - (b) Gifts
 - (i) Ordinary social hospitality
 - (ii) Not from parties to a proceeding
 - (iii) Reports of gifts over \$500
 - (c) Estates of relatives—may serve
- (4) Service on commissions and committees
 - (a) Limited to justice system, cultural, historical or educational activities
- 5) Ethics is also a matter of personal integrity. Aim high in matters of personal and professional ethics

