

Magistrates' Fall One-Day Schools
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October 4, 2022

Ethics: Rules of Conduct for Magistrates

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Magistrate Rules of Conduct

- NC General Assembly mandated that NCAOC prescribe rules of conduct for magistrates in new § 7A-171.3. Rules were first effective 10/1/2021.
- Last modified 10/1/2022.
- Find rules by searching for "North Carolina Rules of Conduct for Magistrates" on AOC public website.

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Rules Linked to Removal Process

- Preamble provides: a Rules violation "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 grounds for removal proceedings."

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Removal Process (GS 7A-173)

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

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Grounds for suspension or removal are the same as for a judge (see GS 7A-376). Those are:

Willful misconduct in office



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Grounds for removal

Not doing the job




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Grounds for removal

Habitual
intemperance




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Grounds for removal

Conviction of crime
involving moral
turpitude




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Grounds for removal—
the biggie

Conduct prejudicial to
the administration of
justice that brings the
office into disrepute



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Rule 1: Uphold Integrity of Magistrate's Office

- Failing to be impartial and have integrity undermines public confidence
- Support professionalism
- Treat all persons with respect

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Rule 2: Avoid Impropriety

- Duty to report non-traffic misdemeanor or felony and DWI charges to Chief District Court Judge within 3 days. (See subsection B.)
- General prohibition against using prestige of magistrate's office to advance private interests of others.
- Ban on membership in organizations that practice unlawful discrimination.

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Rule 3: Be Impartial and Diligent

- *Adjudicative responsibilities:* faithful to law; unswayed by partisan interests; fair; courteous; prompt; avoid ex parte communications in pending proceedings; abstain from public comment about pending proceedings
- Allowed to obtain advice of a disinterested expert (SOG for one).

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Rule 3 Continued

- *Administrative responsibilities*: diligent; competent; present on the job; prompt
- *Educational duties*: complete required instruction

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Rule 3 Continued

- Duty to disqualify or recuse (3.E.) 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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Degrees of Relationship

- See Degrees of Consanguinity chart.
- Third degree covers up to great-grandparents, down to great grandchildren, siblings, aunt and uncles, and nieces and nephews.

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Degree of Consanguinity

5° = 5 degrees of separation

									Gr (X3) grand-parent 3°
									Gr (X4) grand-uncles/aunts 4°
									Gr (X4) grand-parent 4°
								Gr (X3) grand-parent 3°	Gr (X3) grand-parent 3°
							Gr-gr grand-uncles/aunts 5°	Gr-gr grand-uncles/aunts 5°	Gr (X3) grand-parent 3°
					Gr-gr grand-parent 4°	Gr-gr grand-uncles/aunts 5°	Gr-gr grand-uncles/aunts 5°	Gr-gr grand-uncles/aunts 5°	Gr (X3) grand-parent 3°
			Grand-parent 2°	Grand-uncles/aunts 4°	1° cousin once removed 5°	1° cousin 3x removed 6°	2° cousin twice removed 6°	2° cousin twice removed 6°	2° cousin twice removed 6°
	Parent 1°	Aunts & Uncles 3°	1° cousin once removed 5°	2° cousin once removed 7°	2° cousin once removed 7°	3° cousin once removed 9°	3° cousin once removed 9°	4° cousin once removed 11°	4° cousin once removed 11°
You 0°	Siblings 2°	1° cousin 4°	2° cousin 6°	3° cousin 8°	4° cousin 10°	5° cousin 12°	6° cousin 14°	7° cousin 16°	8° cousin 18°
Children 1°	Nephews/nieces 3°	1° cousin once removed 5°	2° cousin once removed 7°	3° cousin once removed 9°	4° cousin once removed 11°	5° cousin once removed 13°	6° cousin once removed 15°	7° cousin once removed 17°	8° cousin once removed 19°
Grandchildren 2°	grand-nephews/nieces 4°	1° cousin twice removed 7°	2° cousin twice removed 9°	3° cousin twice removed 11°	4° cousin twice removed 13°	5° cousin twice removed 15°	6° cousin twice removed 17°	7° cousin twice removed 19°	8° cousin twice removed 21°
Great-grand-children 3°	great grand-nephews/nieces 5°	1° cousin 3x removed 9°	2° cousin 3x removed 11°	3° cousin 3x removed 13°	4° cousin 3x removed 15°	5° cousin 3x removed 17°	6° cousin 3x removed 19°	7° cousin 3x removed 21°	8° cousin 3x removed 23°

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Rule 3 Continued

- See 3.E. (4) on when withdrawal may not be required if parties agree in writing that the potential disqualification is immaterial and the magistrate may participate.

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Rule 3 in Practice

- Your work is not always in a setting with “parties.”
- What do you do when you feel a need to disqualify or recuse yourself?

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Rule 4: Cultural and Historical Activities

- Participation in groups 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 their official capacity.

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Rule 5: Extrajudicial Activities

- May participate in recreational and civic and charitable activities that do not adversely reflect on impartiality.
- May fundraise if you don't give impression you're acting in official capacity.

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Rule 5: Financial Activities

- Refrain from financial dealings that reflect adversely on impartiality
- Receipt of gifts is limited and may not be from a "party presently before the magistrate" [C.(4)]
- Shall not serve in listed fiduciary roles except for family, and then only if won't interfere with duties
- No private practice of law. May represent self.

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Rule 5 : Seeking an Additional Job

- Magistrates should seek counsel from AOC HR about pursuit of secondary employment.
- AOC points to Rule 5, C.(1) on this topic: avoid dealings that reflect adversely on impartiality, interfere with proper performance of duties, exploit the magistrate position, or involve frequent substantial transactions with parties likely to come before the magistrate.

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Rule 6: Political Activity

- 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 endorse candidate for judicial office.
- Must resign to run for non-judicial office.
- 6.D. prohibits discipline of magistrate for supporting/ not supporting particular judicial candidates.

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Rule 7: Respect the Chief District Court Judge

- Magistrates may be subject to discipline for failing to follow direction from chief district court judge and failure to follow these Rules
- Forms of discipline provided, including directive for training and reprimand
- Requires acknowledgement of discipline

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Chief District Court Judge Role

- Has administrative supervision and authority over magistrates. G.S. 7A-146.
- General Assembly has newly authorized chief district court judge to investigate written complaints against magistrates. G.S. 7A-146(13), effective October 1, 2022. Session Law 2022-47.

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Pay particular attention to:

- Rule about reporting criminal charges
- Ex parte contact/communication (can disclose/recuse)
- Relationships with others who may have issue before you
- Changes in fundraising and political activity
- Secondary employment
- Inappropriate use of prestige of office
- Inappropriate statements on social media

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Discussion Questions

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Question 1

A magistrate is married to a police officer. Can the magistrate handle cases in which the officer appears before him or her?

Answer: No. Rule 3E(1)(a) and (e) most specifically. Rule 2C too.

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Question 2

A magistrate's live-in boyfriend is charged with misdemeanor larceny. Do the Rules place any requirements on the magistrate concerning that criminal charge?

Answer: Yes. Report to Chief DJ. Rule 2B(2)

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Question 3

You arrive early to small claims court, as does a merchant bringing several collection suits. One of the defendants comes into the courtroom and sees the two of you chatting. Does your behavior raise ethical concerns?

Answer: Yes. Rule 3B(5) potential ex parte communication concerning matter before court.

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Question 4

Your church asks you to serve as the head of its finance committee. Your duties would include raising money for next year's budget. Can you serve?

Answer: Yes. Rule 5B. See cautions in (1) and (2). Don't act in official capacity.

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Question 5

The incumbent sheriff is running for re-election and asks you to endorse him. Can you?

Answer: No. Rule 6B(4). Also not solicit funds (3).

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Question 6

A candidate running against the resident superior court judge in the upcoming election asks you to endorse him. Can you?

Answer: Yes. Rule 6B(4).

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Question 7

A local bail bonding company gives each magistrate a gift certificate to the local mall at Christmas? Can you accept it?

Answer: Seems like no. Rule 5.C.(4). But (4)(c) is confusing.

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Discussion Questions

1. No. Rule 3E(1)(a) and (e) most specifically. Rule 2C too.
2. Yes. Report to Chief DJ. Rule 2B(2)
3. Yes. Rule 3B(5) potential ex parte communication concerning matter before court.
4. Yes. Rule 5B. See cautions in (1) and (2). Don't act in official capacity.
5. No. Rule 6B(4). Also not solicit funds (3).
6. Yes. Rule 6B(4). But should you?
7. Seems like no. Rule 5.C.(4). But (4)(c) is confusing.

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