



Ethics for Magistrates

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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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Why Does Ethics Matter?



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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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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



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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 ejection 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

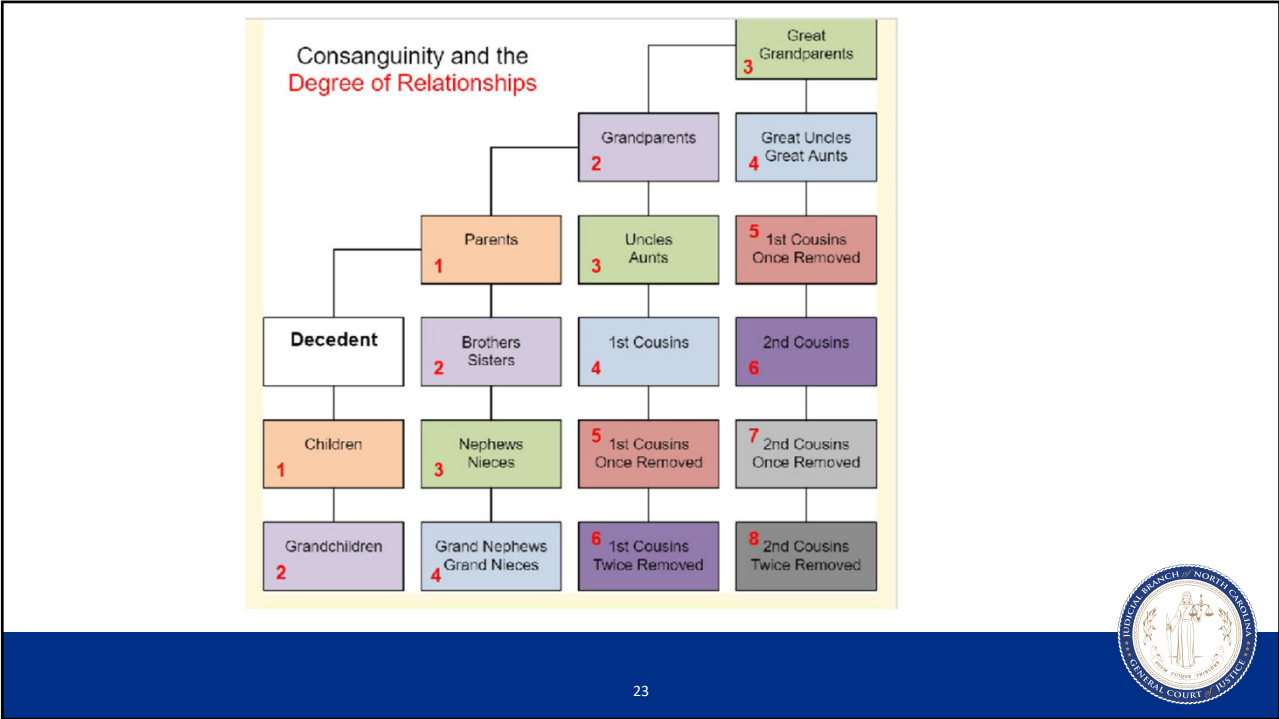
Magistrate Upright is hearing small claims cases. The plaintiff in one case is Magistrate Upright's first cousin.

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



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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?



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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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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?



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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?



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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
 - Counseling
 - 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%202015.pdf



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Thank You

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