

# North Carolina Rules of Conduct for Magistrates

## *With Commentary*

### Rule 1

**A magistrate should uphold the integrity of the office of magistrate and act accordingly.**

- a. 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.
- b. A magistrate must conform the magistrate's professional and personal conduct to the principles established under the law and these Rules and must not engage in conduct that would tend to bring the holder of the office or the Office of Magistrate itself or the judicial system into disrepute or which would be prejudicial to the administration of justice.
- c. A magistrate shall not abuse the prestige of the office that the magistrate holds and shall not use the office to advance personal or economic interest of the magistrate or others or allow others to do so; nor shall the magistrate engage in the inequitable assertion of power or position which would constitute an abuse of that power or position.

### Commentary

[1] Public confidence in the system of justice is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of magistrates. For example, a magistrate should not engage in either professional or personal conduct or actions in person or through the use of social media or a proxy or agent that are vulgar or demeaning to the office that the magistrate holds or to the judicial system or to another person or organization.

[2] A magistrate should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens and must accept the restrictions imposed by the North Carolina Rules of Conduct for Magistrates.

[3] Conduct that compromises, or appears to compromise, the integrity and impartiality of a magistrate undermines public confidence in the judicial system. Because it is not practicable to list all such conduct, the Rule is necessarily cast in general terms.

[4] The Supreme Court of North Carolina has defined the term "conduct prejudicial to the administration of justice" 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, 305, 226 S.E.2d 5, 9 (quoting *Geiler v. Comm'n on Jud'l Qualifications*, 10 Cal.3d 270, 284, 110 Cal.Rptr. 201, 515 P.2d 1, 9 (1973), cert. denied, 417 U.S. 932, 94 S.Ct. 2643, 41 L.Ed.2d 235 (1974)). See also, *In re Brown*, 358 N.C. 711, 719, 599 S.E.2d 502, 507 (2004).

[5] Acts which tend to challenge or contest or to evoke questions as to the integrity of the justice system include, among other things, violations of law, court rules or orders. The test for such adverse, oppositional, and inconsistent activity, then, is whether the conduct would create in reasonable minds a perception that the magistrate violated these rules or engaged in other conduct that reflects adversely on the integrity of the office which the magistrate and its function within the justice system.

[6] Magistrates should participate in activities that promote ethical conduct among magistrates, law enforcement officers, lawyers, and others. They should also support professionalism within their sphere, including law enforcement agencies and the legal profession, and promote equal access to justice for all.

## Rule 2

**A magistrate should avoid impropriety and the appearance of 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.
  - i. A magistrate shall be dignified and shall conduct himself or herself in a manner as to display:
    - (1) the requisite solemnity for the matters over which the magistrate may be presiding;
    - (2) actual impartiality, as well as
    - (3) propriety of the matters with which the magistrate deals in an official capacity.
  - ii. The magistrate shall require similar conduct of others appearing before or involved in the proceedings before the magistrate.
  - iii. A magistrate shall not engage in abusive or taunting behavior and shall not be derisive, condescending, demeaning or deliberately degrading to those persons with whom the magistrate deals in the magistrate's official capacity.
  - iv. A magistrate shall disclose the relevant information to the Chief District Court Judge within three (3) days of the magistrate learning of an immediate family member as that term is defined in N.C. Gen. Stat. §138A-3(40) or other person living in the same household or entity in which the magistrate has an ownership relationship or if the magistrate himself or herself has been charged or implicated in a violation which would to impair the ability of the magistrate to serve as a magistrate or which would tend to bring the office of magistrate into disrepute.

- b. A magistrate should not allow the magistrate's family, business, social, or other relationships to influence the magistrate's conduct or judgment.
- c. The magistrate shall 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 any such person is, or such persons are in, a special position to influence the magistrate.
- d. A magistrate should not hold membership in any organization that practices or appears to engage in unlawful discrimination on the basis of race, color, gender, religion, or national origin.

## Commentary

[1] Avoiding actual improprieties is imperative. Actual improprieties include violations of law, court rules, or orders. The test for appearance of impropriety, then, is whether the conduct would create in reasonable minds a perception that the magistrate violated these rules or engaged in other conduct that reflects adversely on the magistrate's honesty, impartiality, temperament, or fitness to serve as a magistrate.

[2] Avoiding the appearance of impropriety is critical to public confidence in the judicial system and is nearly universally recognized as such. As the United States Supreme Court has explained:

One must also take into account the judicial reforms the States have implemented to eliminate even the appearance of partiality. Almost every State has adopted the American Bar Association's objective standard: "A judge shall avoid impropriety and the appearance of impropriety." ABA Annotated Model Code of Judicial Conduct, Canon 2 (2004). *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 888, 129 S. Ct. 2252, 2266, 173 L. Ed. 2d 1208 (2009). *See also, In re Martin*, 302 N.C. 299, 313, 275 S.E.2d 412, 419 (1981).

[3] Respect for and compliance with the law is required, not only in adjudicative circumstances but in all circumstances. *See In re LaBarre*, 369 N.C. 538, 798 S.E.2d 736 (2017) (holding that a judge's conduct in driving while impaired violated judicial conduct code canons requiring judges to uphold the integrity and independence of the judiciary and to avoid impropriety in all activities and amounted to engaging in conduct prejudicial to the administration of justice that brought the judicial office into disrepute; judge's conduct in engaging in belligerent, offensive, and denigrating behavior towards local law enforcement and emergency personnel following arrest for driving while impaired violated judicial conduct code canons requiring judges to uphold the integrity and independence of the judiciary and to avoid impropriety in all activities and amounted to engaging in conduct prejudicial to the administration of justice that brought the judicial office into disrepute; and censure was appropriate discipline to impose for such conduct).

[4] It would be improper for a magistrate to hold himself or herself out as being a judge. Rather, as provided by N.C. Gen. Stat. §7A-170, a magistrate "is an Officer of the District Court," who performs specific functions in the judicial system.

[5] 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 deferential treatment of any kind. For example, it would be improper 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 his or her personal business.

[6] A magistrate may provide a reference or recommendation for an individual based upon the magistrate's personal knowledge. The magistrate may use official letterhead for such reference or recommendation.

[7] 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 under any circumstances make comments or take action impinging on impartiality and fairness and his or her support for proper judicial principles. *See In re Hair*, 335 N.C. 150, 151, 436 S.E.2d 128, 129 (1993) (judge's explanation of personal stress and difficulties arising from divorce proceedings did not justify conduct in which he publicly threatened members of the staff of the district attorney's office, his former wife's attorneys, and other attorneys with professional reprisal).

[8] A magistrate should not engage in conduct or speech that would subject a litigant, attorney or other person appearing before the magistrate to ridicule or derision. *See In re Inquiry Concerning A Judge, Nos. 270 & 280 Hill*, 357 N.C. 559, 591 S.E.2d 859 (2003) (remarks to attorney during attorney's argument in support of motion before judge, that attorney was lacking in "heart" and was "pretty incompetent").

[9] A magistrate's public manifestation of approval of unlawful discrimination on any basis gives rise to the appearance of impropriety and diminishes public confidence in the integrity and impartiality of the judiciary. A magistrate's membership in an organization that practices invidious discrimination creates the perception that the magistrate's impartiality is lacking or impaired.

[10] An organization is generally said to discriminate unlawfully if it arbitrarily excludes from membership on the basis of race, sex, gender, color, religion, national origin, ethnicity, or sexual orientation persons who would otherwise be eligible for admission or which through an authorized spokesman issues statements or declarations which on the face such statements there appears to be a discriminatory position premised on race, color, sex, gender, religion, national origin, age or ethnicity. Whether an organization practices invidious discrimination is a complex question to which magistrates should be attentive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather, depends upon how the organization selects members, as well as other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is an intimate, purely private organization whose membership limitations could not constitutionally be prohibited.

[11] When a magistrate learns that an organization to which the magistrate belongs engages in unlawful, invidious discrimination, the magistrate must resign immediately from the organization.

[12] This Rule is not intended to apply in any manner to national or state military service.

### Rule 3

#### **A magistrate shall 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.
- b. **Adjudicative responsibilities.** In the adjudicatory function, a magistrate shall act consistently with the law, having due regard to the separate functions involved in civil and criminal cases.
  - (1) A magistrate shall be faithful to the law and maintain professional competence in it.

- (2) A magistrate should be un-swayed by personal or partisan interests, public clamor, or fear of criticism.
- i. A magistrate must act consistently with the maintenance of respect and courtesy and should maintain order and decorum in proceedings before the magistrate.
  - ii. A magistrate must 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.
  - iii. 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.
  - iv. 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.

Where, however, the matters raised in such communications do not relate directly to the merits of the case, these communications are permissible in order to ensure the fair and prompt administration of justice.

- v. A magistrate, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before the magistrate.
- vi. In criminal or traffic matters, a magistrate must remain impartial, and regardless of whether the magistrate is acting regarding the entry of a guilty plea where authorized by statute or the payment of fines or costs, the magistrate shall act to observe the rights of the defendant to preserve impartiality and fairness.
- vii. Similarly, in victims', witnesses', or law enforcement officers' *ex parte* appearances before a magistrate, the magistrate must treat the victim, witness, or law enforcement officer with respect and shall maintain impartiality in exercising the duty to determine probable cause and to issue proper process or to decline to do so premised on its absence, but shall not direct or disparage the investigation or interfere with it.
- viii. In civil proceedings before the magistrate, when acting in effect as a trial judge, the magistrate has a duty of absolute impartiality and must act accordingly.
- ix. A magistrate shall apply proper reason and adjudicatory decision making in making the requisite determinations in matters before the magistrate.

- x. A magistrate should dispose promptly of the business of the court and must promptly transfer documents and money to the Clerk's office, as well as other requisite documents and materials, to law enforcement agencies, the District Attorney, or other requisite agency. Particularly as it relates to monies, the magistrate must follow the directives promulgated by the North Carolina Administrative Office of the Courts or, as adopted, the procedures of the Office of the North Carolina Auditor.
  - xi. A magistrate shall not offer public comment about any matter over which the magistrate has presided or with which the magistrate has any professional connection, and the magistrate shall 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.
    - (1) Provided, however, that a magistrate shall not be prohibited from speaking about the legal system or the administration of justice in an educational context or from explaining for public information the procedures of the Court or magistrate's office consistent with these Rules.
    - (2) Notwithstanding the foregoing, a magistrate shall not be prohibited from commenting on proceedings in which the magistrate is a litigant in a personal capacity.
  - xii. Depending upon the location of the proceedings, to the extent that the law, including the General Rules of Practice for the Superior and District Courts Supplemental to the Rules of Civil Procedure Adopted Pursuant to G.S. 7A-34, or the local Rules of Court, the Orders of the judges of the Superior or District Court for that locale, or the head of a jail or detention center may permit, a magistrate must follow those directives with regard to permitting broadcasting, televising, recording, or taking photographs in the courtroom and immediately adjacent areas during civil or criminal sessions of court or recesses between sessions, and pursuant to the provisions of Rule 15 of the General Rules of Practice for the Superior and District Courts.
- b. **Administrative responsibilities.** With regard to administrative functions, whether directly or indirectly arising from adjudicative responsibilities, a magistrate shall act consistently with the law and shall comply with the Rules or directives established by the Chief District Court Judge or the Chief Magistrate of the Judicial District in order to assist in the efficient and effective operations of the Office of the Magistrate.
- i. A magistrate is obligated to diligently discharge the magistrate's administrative responsibilities and to maintain professional competence in administration, including the proper use of the requisite forms promulgated by the Administrative Office of the Courts, the software adopted for the magistrate's use, and the procedures established by the Courts, and those designated by those supervisory officials or officers with authority to do so.

- ii. A magistrate shall comply with scheduling directives issued by the Chief Magistrate or the Chief District Court Judge and shall be present and serve for the periods of time necessary to provide the services to the law, the public, and advance the interests of justice.
  - iii. A magistrate shall promptly file all appropriate documentation related to matters over which the magistrate presides as contemplated under Rule 3 b. x of these Rules, or for which the magistrate has responsibility, and shall observe the administrative duties assigned by the Chief Magistrate or the Chief District Court Judge.
- c. **Educational Duties and Responsibilities.** In order to obtain and maintain competence required for the Office of Magistrate, all magistrates must be appropriately instructed and have a requisite level of erudition in the law.
- i. Pursuant to N.C. Gen. Stat. § 7A-177, within 6 months of taking the Oath of Office as a magistrate for the first time, a magistrate shall attend and satisfactorily complete a course of basic training of at least 40 hours in the civil and criminal duties of a magistrate. Thereafter, no person shall continue to serve in the Office of Magistrate or exercise the duties of magistrate unless he or she shall have first attended and completed annual or biennial course of instruction, which shall be offered in accordance with the directive of the Chief Justice of the Supreme Court of North Carolina.
  - ii. All magistrates shall be required to attend such course or other courses of continuing educational instruction as may be required by directive of the Chief Justice of the Supreme Court after due consultation with the officers of the North Carolina Magistrate's Association, the North Carolina School of Government, or others that the Chief Justice may deem appropriate, and which course of instruction is established and operated consistent with the methodology and pedagogical interests as the course of instruction under N.C. Gen. Stat. § 7A-177.
  - iii. Failure to attend such courses of continuing educational instruction without good cause shall constitute conduct prejudicial to the administration of justice that brings the judicial office into disrepute and willful misconduct in office.
- d. **Duty to Disqualify or Recuse**
- i. On motion of any party, a magistrate should disqualify himself or herself, or *sua sponte* should, recuse from a proceeding in which the magistrate's impartiality may reasonably be questioned, including but not limited to instances where:
    - (1) The magistrate has a personal bias or prejudice concerning a party or other person;

- (2) The magistrate has personal knowledge of disputed evidentiary facts concerning the proceedings;
  - (3) If the magistrate is or was a licensed attorney, 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;
  - (4) The magistrate knows that he or 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 in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;
  - (5) 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:
    - (a) is a party to the proceeding, or an officer, director, or trustee of a party;
    - (b) is acting as a lawyer in the proceeding;
    - (c) has an interest that could be substantially affected by the outcome of the proceeding;
    - (d) is to the magistrate's knowledge likely to be a material witness in the proceeding;
    - (e) has a business or personal friendship, relationship or dispute with a person involved in, or having an interest in, the proceeding or its outcome.
- e. 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.
- i. For the purposes of this section:
    - (1) The degree of relationship is calculated according to the civil law system;
    - (2) "Fiduciary" is to be given its ordinary meaning, but is also intended to include such relationships as executor, administrator, trustee, and guardian;



- (3) “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:
- (a) ownership in a mutual or common investment fund that holds securities is not a substantial “financial interest” in such securities;
  - (b) an office in an educational, cultural, historical, religious, charitable, fraternal or civic organization is not a “financial interest” in securities held by the organization.
- f. 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 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 or parties, shall be incorporated in the record of the proceeding. For purposes of this section, *pro se* parties shall be considered as if they were 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 would result in inability to fulfill his or her duties and perform the tasks associated with such official duties.

[2] Treating all persons with respect is critical to the judicial functions of the Office of Magistrate. That obligation to conduct himself or herself with proper restraint and decorum extends to all applicants, litigants or others with whom the magistrate must deal in his or her judicial function. *Compare In re Bullock*, 324 N.C. 320, 377 S.E.2d 743 (1989) (judge’s conduct in calling law enforcement officer into judge’s chambers, and telling officer “if you want to slap me, there is no better time to do it than right now,” as result of judge’s belief that officer had expressed desire to slap him, and judge’s subsequently taking physical hold of officer and escorting him out of office was not so egregious as to amount to conduct prejudicial to administration of justice that brings judicial office into disrepute) *with In re LaBarre*, 369 N.C. 538, 798 S.E.2d 736 (2017)(conduct in engaging in belligerent, offensive, and denigrating behavior towards local law enforcement and emergency personnel following arrest for driving while impaired violated judicial conduct code) *and In re Daisy*, 359 N.C. 622, 614 S.E.2d 529 (2005)(sexual harassment of judicial assistant and paralegal constituted conduct prejudicial to administration of justice that brought judicial office into disrepute and which violated Judge’s Oath of Office).

[3] 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 Matter of Edens*, 290 N.C. 299, 226 S.E.2d 5 (1976) (willful misconduct in office and conduct prejudicial to the administration of justice that brings the judicial office into disrepute occurs when a judge improperly precludes the district attorney from participating in the disposition of a criminal case,

improperly removes the proceeding from the public domain, and violates judicial canon requiring a judge to accord every person who is legally interested in a proceeding, or his lawyer, the full right to be heard according to law and, except as authorized by law, neither initiate nor consider *ex parte* or other communications concerning a pending or impending proceeding).

[4] 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. This directive to avoid *ex parte* involvements is an important one in order to protect the fairness of the proceeding and the perception of a just and equal system of justice.

The law recognizes, however, that for both practical and prudential reasons there are circumstances in which *ex parte* communications are necessary or even desirable, such as in cases arising under an application for a warrant or process in a criminal case, among other matters, and in particular civil cases such as matters arising under Chapter 50B of the North Carolina General Statutes or in matters of scheduling of the like.

This principle 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. In such instances, ordinarily, unless authorized by law, a magistrate should not knowingly engage in communications concerning matters that are to be heard before the magistrate for official action.

The Rule explicitly provides that where, however, the matters raised in such communications do not relate directly to the merits of the case, these communications are permissible in order to aid the prompt administration of justice.

[5] Accordingly, the Rule contemplates that a magistrate may initiate, permit, or consider *ex parte* communications only as authorized by law. *Cf.*, 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”). In many instances, however, 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, such as an application for a domestic violence restraining order or other similarly delegated matter, a magistrate may be authorized to conduct an *ex-parte* hearing. A magistrate must understand the contours of the Rule proscribing *ex parte* communications and not engage in such communications, particularly in the civil context, concerning matters that are scheduled for hearing before the magistrate or otherwise appropriately before the magistrate.

[6] A magistrate’s conduct should be consistent with that expected of an impartial member of the judiciary but should not exceed it. For example, a magistrate should not extend his or her views into the duties of law enforcement or the district attorney and should not attempt to direct or restrict the investigation, charging decisions or the defense of a case or the reasons for the law enforcement officer’s, district attorney’s, defendant’s or defendant’s decisions regarding the case. *Cf.*, *In re Bullock*, 328 N.C. 712, 718, 403 S.E.2d 264, 267 (1991)(conduct should be consistent with that expected of an impartial member of the judiciary and actions of confining attorney in court for brief period, and subsequently indicating that judge will impose restrictions on attorney’s future practice before judge, in response to attorney’s proper refusal to explain reasons for his motion to be relieved of representing criminal defendant and his reasons for not recommending whether client should be admitted to first offender program, rather than promoting public confidence in the integrity and impartiality of the judiciary, amounted to conduct prejudicial to the administration of justice).

[7] Hearings before magistrates in the civil context rarely incur the interest of the press. In criminal cases, notoriety of the case or of the defendant may give rise to a desire on the part of the media to broadcast video or photographic images or audio excerpts of an initial appearance or other proceeding before the magistrate. Because such matters involve complex constitutional and ethical issues for the litigants and lawyers involved as well as the judiciary, many Chief District Court judges do not delegate such issues to the magistrate. Ordinarily, such matters are handled through Rules of Court or directives of the appropriate judges. In absence of such directive, particularly when the magistrate’s office or courtroom where such a hearing will occur is within a detention facility where jail security may prohibit persons from entry and for security reasons may not allow cameras, the Rule contemplates that the

magistrate will confer with the head of the agency operating the facility before appearing to authorize such entry, and, in any event, that the magistrate will follow the Orders and Rules of Court.

[8] Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a magistrate's official responsibilities.

[9] This rule contemplates that the Supreme Court through order or other directive of the Chief Justice or designee of the Chief Justice may establish a curriculum, course of study or the like, order to obtain and maintain competence required for the Office of Magistrate.

[10] The duty to hear all proceedings fairly and with patience, that is giving all parties an opportunity to be heard fully, is not inconsistent with the duty to dispose promptly of the business before the magistrate. Magistrates can act in an efficient manner and means while being judicious and deliberate.

[11] The duty under these Rules to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary applies to all the magistrate's activities, including the discharge of the magistrate's adjudicative and administrative responsibilities. The duty to be courteous includes the responsibility to avoid comment or behavior that could reasonably be interpreted as harassment, prejudice or bias.

[12] A magistrate should neither engage in, nor tolerate, workplace conduct that is reasonably interpreted as harassment, abusive behavior, or retaliation for reporting such conduct. Harassment encompasses a range of conduct having no legitimate role in the workplace, including harassment that constitutes discrimination on impermissible grounds and other abusive, oppressive, or inappropriate conduct directed at judicial employees or others, and includes (a) engaging in unwanted, offensive, or abusive sexual conduct, including sexual harassment or assault; (b) treating litigants, attorneys, judicial system employees, or others in a demonstrably egregious and hostile manner; or (c) creating a hostile work environment for judicial employees or intentional discrimination on the basis of race, color, sex, orientation, religion, national origin, age, or disability.

[13] A magistrate should diligently discharge administrative responsibilities, maintain professional competence in administration of magisterial functions, and facilitate the performance of the administrative responsibilities of other magistrates and court personnel.

[14] Failure to conduct the proceedings before the magistrate and to "diligently discharge the judge's administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials" is a violation of these Rules. *See In re Inquiry Concerning a Judge, No. 17-143*, 827 S.E.2d 516, 521 (N.C. 2019).

[15] Magistrates must efficiently dispose of the matters assigned to the magistrate and to 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, magistrates must be available to decide matters that come before magistrates. Unwarranted disqualification may 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.

[16] Under this Rule, a magistrate may be disqualified whenever the magistrate's impartiality might reasonably be questioned.

[17] The terms "recuse" or "recusal" are intended to be interchangeable with the term "disqualification."

[18] A magistrate's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

[19] The Rule of necessity may override the Rule of disqualification. For example, a magistrate might be the only judicial officer available in a matter requiring immediate adjudicative action, such as a hearing on probable cause,

summary ejectment, or issuance of a domestic violence restraining order. In matters that require immediate action, the magistrate should disclose on the record the basis for possible disqualification and make reasonable efforts to effect remedial efforts.

[20] 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 itself disqualify the magistrate.

[21] 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.

[22] "Economic interest," means ownership of more than a *de minimis* legal or equitable interest. Except for situations in which a magistrate participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a magistrate, it does not include: (1) an interest in the individual holdings within a mutual or other common investment fund; (2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the magistrate or the magistrate's spouse, domestic partner, parent, or child serves as a director, officer, advisor, or other participant; (3) a deposit in a financial institution or deposits or proprietary interests the magistrate may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or (4) an interest in the issuer of government securities held by the magistrate.

[23] This Rule's restrictions on a magistrate's speech are essential to the maintenance of the integrity and impartiality of the judiciary.

[24] This rule does not prohibit a magistrate from commenting on proceedings in which the magistrate is a litigant in a personal capacity and not arising from the magistrate's official duties. In cases in which the magistrate is a litigant in an official capacity, such as a writ of mandamus or *habeas corpus*, the magistrate must not comment publicly.

[25] Depending upon the circumstances, the magistrate should consider whether it may be preferable for a third party, such as a committee of the Chief Justice's Commission on Professionalism, rather than the magistrate, to respond or issue statements in connection with allegations concerning the magistrate's conduct in a matter.

## 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:
  - i. 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.
  - ii. 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.

- (1) 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) A magistrate may not actively assist such an organization in raising funds but may be listed as a contributor on a fund-raising invitation or other informational document.
  - (b) A magistrate may make recommendations to public and private fund-granting agencies regarding activities or projects undertaken by such an organization.

## Commentary

[1] Complete separation of a magistrate from extrajudicial activities is neither possible nor wise. As a judicial officer a magistrate may be in a special position to contribute to the law, associations of magistrates, and the administration of justice, including recommendations and procedural law and improving criminal, juvenile, and civil justice. To the extent that the magistrate's time permits, and impartiality is not compromised, the magistrate is encouraged to do so, either independently or through an association, conference, or other organization dedicated to the law. Subject to the same limitations, magistrates may also engage in a wide range of non-law-related activities.

[2] The restrictions on other activities are clearly set forth in the Rule and its subsections.

## Rule 5

**A magistrate must regulate the magistrate's extra-judicial activities to ensure that they do not prevent or negatively impact 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:
  - i. A magistrate should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the magistrate.
  - ii. A magistrate may be listed as an officer, director or trustee of any cultural, educational, historical, religious, charitable, fraternal or civic organization. A

magistrate may not actively assist such an organization in raising funds but may be listed as a contributor on a fund-raising invitation.

- iii. 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.**

- i. 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.
- ii. Subject to the requirements of Rule 5, c., I., 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.
- iii. A magistrate should manage his or her investments and other financial interests, including those of those of the magistrate's spouse, children, or parents, to minimize the number of cases in which the magistrate is disqualified.
- iv. Neither the magistrate nor a member of the magistrate's family residing in the magistrate's household should accept a gift of substantial value from anyone except as follows:
  - (1) 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 judicial function or one related to the members of the Bar, a cultural or historical activity, or an event related to the economic, educational, legal, or governmental system, or the administration of justice;
  - (2) 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;

- (3) For the purposes of this section “member of the magistrate’s family residing in the magistrate’s household” means any relative of the magistrate’s family, who resides in the magistrate’s household.
  - v. 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.
  - i. “Member of the magistrate’s family” includes a spouse, child, grandchild, parent, grandparent or any other relative of the magistrate by blood or marriage.
  - ii. As a family fiduciary, a magistrate is subject to the following restrictions:
    - (1) A magistrate should not serve in such a family fiduciary capacity if it is likely that as a fiduciary the magistrate will be engaged in proceedings that would ordinarily come before the magistrate, or if the estate, trust or ward becomes involved in adversarial proceedings in the court on which the magistrate serves.
    - (2) 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 shall not engage in the private practice of law.
- 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] This rule is not intended to reach all financial and business dealings of a magistrate but only those 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 or matters with respect to which the magistrate serves. Substantial transactions refer to those of significant, considerable importance, size, or worth.

[2] Although a magistrate may not contemporaneously hold the Office of Magistrate and contemporaneously be engaged in the private practice of law, 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.

[3] This Rule does not prohibit the practice of law pursuant to military service.

## Rule 6

**A magistrate may engage in political activity consistent with the magistrate's status as a public official but shall not engage in political activity which conflicts with the integrity and purposes of the position as a magistrate.**

- a. **Definitions.** For the purposes of this Rule only, the following definitions apply:
  - i. A "candidate for judicial office" shall mean a person actively and publicly seeking election to the Office of Justice, Judge, Attorney General, Clerk of Superior Court, or District Attorney. 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.
  - ii. The term "candidate" refers to and means a person actively and publicly seeking election to any elective or political office.
  - iii. 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.
  - iv. 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:
  - i. act as a leader of or hold an office in a political organization; or



- ii. 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, or oppose or criticize a candidate for non-judicial public office; or
  - iii. solicit funds on behalf of a political party, organization, or an individual (other than himself or herself if he or she becomes a candidate) seeking election to a non-judicial office, by specifically asking for such contributions in person, by telephone, by electronic media, or letter; or
  - iv. endorse a candidate for public office except a candidate for judicial office.
- c. **Resignation upon Candidacy.** A magistrate should not remain in the position of an Officer of the Court if the magistrate becomes a candidate in a primary or general election for any non-judicial office.
- d. **Restrictions on Other Political Activity.** A magistrate should not engage in political activity inconsistent with the terms of this Rule. This provision does not prevent a magistrate from engaging in activities described in Rule 4.

## Commentary

[1] Public confidence in the integrity impartiality in the magisterial level of the judicial system is eroded, and magistrates are perceived to be subject to political influence.

[2] Although judges and judicial candidates may register to vote as members of a political party, they are generally prohibited from such political activity, and because magistrates are appointed and not elected, there is little reason to expand the restrictions on political activity to appointed magistrates. Even judges and judicial candidates, who must engage in the political process, are excluded from assuming leadership roles in political organizations as magistrates must be.

[3] Accordingly, the provisions of this Rule prohibit magistrates from making speeches or public statements on behalf of political organizations or using the prestige of their office to publicly endorse or oppose candidates for public office, respectively, to prevent them from abusing the prestige of the Office of Magistrate to advance the interests of others.

[4] In an appointive system, a person holding such an appointed judicial post who is not permitted to run for election to, or retention in, that post should resign the judicial office if the appointee becomes a candidate in a primary or general election for any non-judicial office. *See, e.g.*, Code of Conduct for United States Judges, Canon 5(B), Transmittal 02-046 (March 12, 2019). A Rule which would allow magistrates to remain in an appointed office within the judicial system while running, for example, for Sheriff, County Commissioner, State Representative, Senator, or other local or statewide non-judicial office circumvents the intent of these Rules and undermines the impartiality and integrity of the Office of Magistrate without corresponding benefit.

[5] When seeking support or endorsement, or when communicating directly with an appointing or confirming authority, a candidate for appointment 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.

[6] In no event will a magistrate be required or forced to endorse any candidate for any political office. Such an effort by any political candidate is antithetical to the objectives of a fair and impartial system of justice and to these Rules.

[7] Although members of the families 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 public office whereby the integrity of the magistrate's office or the appearance of their ability to remain impartial and professional may be called into question. A magistrate should not become actively involved in a family member's political activity or campaign for public office. To avoid public misunderstanding, magistrates should take, and should urge members of their families to take, reasonable steps to avoid any implication that they are using the prestige of the magistrate's office to further their political agenda or campaign.

## Rule 7

### **A magistrate is subject to the supervisory authority contemplated under the North Carolina General Statutes and the sanctions provided under these Rules of Conduct.**

- a. **Compliance with the Law and Rules.** Persons holding the position of magistrate are officers of the District Court and each magistrate holds a position of public trust, and as expressed under these Rules, those officers must adhere to the highest standards of integrity. At a minimum, magistrates must:
  - i. be knowledgeable of and compliant with the law and responsive to supervisory directives, instructions, and sanctions of the authorities exercising authority over a magistrate;
  - ii. exercise the highest degree of diligence, dependability, and responsibility in discharging the duties of the Office of Magistrate, perform the magistrate's job functions in a manner satisfactory to the magistrate's supervisor, and display a higher level of professional and personal responsibility than expected for members of other agencies or organizations other than other judicial officials with whom the magistrate deals;
  - iii. not engage in willful misconduct in office; that is, conduct which is improper and wrongful conduct by an Officer of the Court, acting in the magistrate's official capacity done intentionally, knowingly, and generally in bad faith, and that is more than a mere error of judgment;
  - iv. not engage in conduct prejudicial to the administration of justice that brings the judicial office into disrepute, defined as conduct that a magistrate undertakes in good faith, but which nevertheless would appear to an objective observer to be not only unjudicial conduct but conduct prejudicial to the public esteem for the Office of Magistrate;
  - v. refrain from official or personal activities which are illegal, demonstrate a deliberate indifference to the rights of others, or which adversely reflect upon the Office of Magistrate;
  - vi. avoid both the fact and the appearance of impropriety, conflict of interest, or unprofessional conduct in discharging the duties of the Office of Magistrate;

- vii. not violate these Rules of Conduct for Magistrates.
- b. **Violation of the Applicable Standards.** The failure to observe personally the appropriate standards of conduct necessary to ensure that the integrity of the Office of Magistrate and the judiciary is preserved, to conduct himself or herself in a manner that promotes public confidence in the integrity of the judiciary and the system of justice established for the State of North Carolina, and the failure to adhere to the Rules of Conduct for Magistrates may serve as a basis for suspension or removal of a magistrate as provided under N.C. Gen. Stat. § 7A-173, and separately, may be the basis for imposition of a supervisory sanction by the judicial official having supervisory authority under these Rules or any statute.
- c. **Statutory Procedures.** N.C. Gen. Stat. § 7A-173 (suspension; removal; reinstatement) is controlling, and in the event of a conflict between the provisions of these Rules of Conduct for Magistrates and the enactment of the General Assembly, the statutory provisions shall control, provided however, that to the extent that the statute and these Rules may be read together to provide consistent guidance, they must be so understood.
  - i. N.C. Gen. Stat. § 7A-173 reads:
    - (a) A magistrate may be suspended from performing the duties of his office by the Chief District Judge of the District Court district in which his county is located, or 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 county 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 resides. If the Chief District Judge, upon examination of the sworn charges, finds that the charges, if true, constitute grounds for removal, he may enter an order suspending the magistrate from performing the duties of his 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 county 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 he finds that grounds for removal exist, he shall enter an order permanently removing the magistrate from office and terminating his salary. If he 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 his office. If, upon final determination, he is ordered reinstated, either by the appellate division or by the Superior Court on remand, his salary shall be restored from the date of the original Order of Removal.

- ii. The statutory enactment quoted and contained within this Rule is the language of the statute as constituted at the time of the initial promulgation and adoption of these Rules of Conduct, provided, however, that the statute as modified from time to time by the General Assembly and signed by the Governor or which becomes effective by operation of law without gubernatorial action as otherwise provided by law, shall be and such a ratified statute is adopted in substitution and shall be a part of these Rules.

d. **Procedures under the Rules.** In addition to the statutory procedures set forth above, supervisory sanctions may be imposed even when conduct which violates these Rules of Conduct for Magistrates does not warrant or does not result in removal from office:

- i. Generally, upon learning of such a violation, the magistrate's immediate supervisor (which in some judicial districts may be the Chief District Court Judge or Chief Magistrate, as the Chief District Court Judge may designate) is responsible for initiating a disciplinary action when improper conduct is observed or appears to have occurred.
  - (1) A supervisory notice informing the magistrate of the complaint and a short and plain statement of the facts describing generally the events, series of events, transactions, or occurrences alleging or implicating improper conduct.
  - (2) No particular form of pleading is or will be required; provided however, the notice to the magistrate must reference the Rule or Rules claimed to have been violated.
  - (3) The notice must also set forth the range of supervisory sanctions which the supervisory authority deems appropriate.

- ii. Supervisory sanctions may range from an oral or written counseling to a recommendation for the implementation of the statutory mechanism for suspension or removal. Based on the totality of facts and circumstances (including, but not limited to, the nature of the violation, any prior violations or the past, current or likely repetition of conduct that has resulted in appellate decisions affirming disciplinary action taken against a judge of the General Court of Justice), one of the following specific sanctions may be imposed:
  - (1) Counseling, either orally or in writing; or
  - (2) Training (including initial or remedial training); or
  - (3) Written Reprimand; or
  - (4) Public Censure; or
  - (5) Probation; or
  - (6) Recommendation of Suspension (or under the statute for an immediate suspension for an egregious or dangerous violation of law), the Chief District Judge may impose an immediate suspension for up to three (3) days without prior notice of hearing in order to protect a person or persons entitled to such protection or to protect the functions and integrity of the judiciary and the system of justice only if it clearly appears from specific facts found that immediate and irreparable injury, loss, or damage will result before the magistrate opposing such an immediate sanction can be heard in opposition; or,
  - (7) Recommendation of Removal.
- iii. When a magistrate is given a supervisory sanction notice, that magistrate shall be required to sign it, acknowledging receipt of the notice.
  - (1) The magistrate's signature does not signify agreement with the contents of the notice but does signify that the magistrate has received the notice training, counseling, reprimand, or other disciplinary action that occurred. The signature line of the notice shall be prefaced with a statement indicating that it is a mere acknowledgment, not agreement, with the substance of the notice or the referenced action, and, if the magistrate elects to do so, the magistrate may, but is not required to state the magistrate's disagreement with the terms of the notice or the referenced action. In the event, that the magistrate fails or refuses to sign the notice notwithstanding the terms of this Rule and the facial declaration of the notice that the signature is a mere acknowledgment of receipt of the notice and not an agreement with its terms of the referenced action, the supervisory authority may in the exercise of his or her reasonable discretion deem the failure to sign as a tacit admission.
  - (2) If a specific proposed sanction is proposed, the magistrate may agree with the action by providing a written notice of acceptance of the allegations or proposed sanction or may request a review of the facts and proposed sanction, by personal delivery (as that term is defined under

Rule 5 of the Rules of Civil Procedure) within three (3) days (72 hours) of the receipt of the notice of supervisory sanction (as calculated under Rule 6 of the Rules of Civil Procedure).

- (3) Except for the procedures outlined in the governing statute, formal hearings are not mandated by statute, but where the magistrate disagrees with the proposed sanction or either the supervisor or the magistrate believes that a review of the facts, circumstances, events, transactions, and occurrences, or series of them (including the sanctions, if any, to be imposed) warrant further review, either the magistrate or the supervisor may request or set a hearing to be conducted within seven (7) business days at a place and in a manner that the supervisory authority may direct.
- iv. In circumstances under which corrective action is successful, the supervisor may commend the magistrate and acknowledge the improvement, either orally or in writing.
- v. In circumstances under which corrective action is unsuccessful, or if the supervisor believes the violation appearing warrants doing so, the supervisor may while contemporaneously or after imposing another sanction, recommend or take other action, which may include, but is not limited to, filing of sworn written charges in the Office of Clerk of Superior Court for the county in which the magistrate resides and instituting and participating in further proceedings.
- e. **Definitions and Applications of Supervisory Sanctions Under the Rules.** Other than the definitions and application of suspensions, removal, and reinstatement as provided in N.C. Gen. Stat. § 7A-173, under these Rules the range of sanctions which may apply either before or following a hearing are defined as:
  - i. **Training**
    - (1) Minor violations committed as a result of an apparent misunderstanding of law, regulations, rules, or directives are indications of training needs. These needs may be corrected by the proper initial or remedial training.
    - (2) Supervisors who use training as a function of supervision must document their actions and follow the procedures outlined in this Rule.
  - ii. **Counseling**
    - (1) Counseling assists magistrates in problem solving and conflict resolution and may be preventative or corrective in nature. Counseling may focus on changing present behavior or work methods.

- (2) Supervisors should counsel a magistrate when the magistrate has an existing problem or is experiencing difficulties understanding or adjusting to matters which:
  - (a) Are job related; or
  - (b) Violate rules, orders or court directives; or
  - (c) Affect interpersonal relationships with co-workers; or
  - (d) Affect the delivery of services to the public, law enforcement officers, or agencies, litigants, or others who seek the services of the magistrate; or
  - (e) Display a lack of respect for other persons, the rights of others, or a failure to adhere to the Rules of Conduct for Magistrates; or,
  - (f) Are personal matters which are affecting the magistrate's work.
- (3) All counseling should be documented by the supervisor.

iii. Written Reprimand

- (1) A written reprimand is a formal rebuke, reproof, or admonition to the magistrate from the magistrate's supervisor describing the way in which the magistrate's conduct or performance has failed to meet prescribed standards under these Rules of applicable law or regulation.
- (2) The written reprimand may be used in circumstances in which a counseling statement could have been used, but in the judgment of the supervisory authority, where an offense or violation has been committed, or when the same, similar, or related conduct has occurred in the past or has been repeated, or the totality of the facts demonstrate circumstances which require more serious action than a counseling notice.

iv. Public Censure

- (1) Public censure, while related to and including the terms giving rise to a written reprimand, is the expression of formal disapproval of the actions, performance, or conduct of a magistrate.
- (2) A censure is a written form of discipline more serious than a reprimand issued in cases in which a magistrate has violated one or more provisions of the Rules of Conduct for Magistrates, and has caused, or is likely to cause, significant harm or potential significant harm to an applicant, to the magistrate, a law enforcement officer, or agency, a member of the public, judiciary, or the administration of justice, but the protection of the public or these entities or interests does not require a suspension.

v. Probation

- (1) For purposes of the application of these Rules, probation is a form of discipline that may be imposed alone or together with reprimand suspension. Probation means that the magistrate shall strictly abide by the policies and procedures with the understanding should the magistrate fail to strictly abide by the Rules or applicable law, a higher level of discipline shall be imposed for any violation.

vi. Suspension

- (1) Suspension is a form of action or sanction in which a magistrate may be removed from duty with or without pay for a specific period of time.
- (2) Suspension without pay is a more serious action or sanction in which the magistrate shall forfeit a portion of the magistrate's salary for misconduct considered to be serious or part of a continuing pattern of behavior involving repeated misconduct, but which may be imposed only following a proceeding conducted consistent with the provisions of N.C. Gen. Stat. § 7A-173. Such a suspension shall not be imposed as an interlocutory remedy unless authorized under other controlling provisions of law.
- (3) Ordinarily, a magistrate should not be subject to suspension for a period of more than 3 days unless the conduct appears to constitute a violation of law or when the conduct is egregious and the circumstances are such that the Chief District Court Judge concludes that a hearing under N.C. Gen. Stat. § 7A-173, and in such a case a hearing upon suspension or removal should be held within ten days following the notice of violation unless the Court in its discretion sets a subsequent date for the trial of the matter of suspension or removal.
- (4) Suspension may be imposed under these Rules only as provided in and consistent with N.C. Gen. Stat. § 7A-173.

vi. Removal

- (1) Removal from office involves the termination of a magistrate from duty, ending that magistrate's employment as an Officer of the Court.
- (2) Removal may be imposed under these Rules only as provided in and consistent with N.C. Gen. Stat. § 7A-173.

vii. Records Maintenance



- (1) Records and supporting documents which relate to an administrative review of disciplinary action shall be retained by the supervisory authority.
- (2) A magistrate by letter to the Chief District Court Judge may request that a counseling statement or reprimand be removed from the magistrate's file if the magistrate has completed at least one (1) year of service from the date of such counseling or reprimand without receiving a counseling statement, reprimand, censure or other adverse supervisory action for unsatisfactory performance or other violation of these Rules.

### Commentary:

[1] This Rule, Rule 7 of the Rules of Conduct for Magistrates, is not intended to be identical to or interpreted as if it were merely a part of the Canons of Judicial Conduct. Although it addresses similar concerns in many instances, it is also substantially different in its impact and application. While there are substantial similarities to, and overlap with, the Canons governing the conduct of judges and even the Rules of Professional Conduct for attorneys, in particular areas, there is a deviation from the practical purposes and application of this Rule related to supervisory sanctions. Yet, both the Canons of Judicial Conduct and these Rules of Conduct for Magistrates have "the purpose of the process for addressing allegations of judicial misconduct administered by the Judicial Standards Commission is to protect the public against improper judicial actions" or acts or actions done by a person who is an Officer of the District Court. *N. C. State Bar v. Tillett*, 369 N.C. 264, 287, 794 S.E.2d 743, 757 (2016)(Ervin, J. concurring in the result).

[2] "Under most state systems of judicial discipline, the sanction for unethical conduct ranges from private reprimand to removal." Leslie W. Abramson, *Canon 2 of the Code of Judicial Conduct*, 79 Marq. L. Rev. 949, 959 (1996). Certainly, Rule 7 addresses unethical conduct and addresses remedies from reprimand to removal, "[t]he statutory procedures for removal of magistrates are entirely different from those providing for censure or removal of judges," *In re Kiser*, 126 N.C. App. 206, 208, 484 S.E.2d 441, 442 (1997), and the nature and scope of this Rule is intended to be broader while addressing the individual magistrate's conduct in order to assist in the supervision and operations of the Office of the Magistrate, not discipline alone. *See generally, In re Inquiry Concerning a Judge*, 356 N.C. 389, 398, 584 S.E.2d 260, 266 (2002) ["The Judicial Standards] Commission serves as an arm of the Court to conduct hearings for the purpose of aiding the Supreme Court in determining whether a judge is unfit or unsuitable." *In re Tucker*, 348 N.C. 677, 679, 501 S.E.2d 67, 69 (1998)(quoting *In re Hardy*, 294 N.C. 90, 97, 240 S.E.2d 367, 372 (1978)). However, final authority to discipline judges lies solely with the Supreme Court."); *Matter of Edens*, 290 N.C. 299, 304–05, 226 S.E.2d 5, 8 (1976)(quoting *In re Crutchfield*, 289 N.C. 597, 602, 223 S.E.2d 822, 825 (1975)(noting that an inquiry under the Code of Judicial Conduct "is an inquiry into the conduct of a judicial officer, the purpose of which is not primarily to punish any individual but to maintain due and proper administration of justice in our State's courts, public confidence in its judicial system, and the honor and integrity of its judges.")). *In re Peoples*, 296 N.C. 109, 162, 250 S.E.2d 890, 921 (1978)("the purpose of the removal proceedings, ... is to protect the public from unfit public officials").

[3] The North Carolina General Statutes provide for the specific administrative and supervisory authority over magistrates:

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 his district. These powers and duties include, but are not limited to, the following:

...

(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.

...

(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.

N.C. Gen. Stat. § 7A-146(4), (12).

[4] These statutes, taken together, make it explicit that the appointment of magistrates is within the authority of the Senior Resident Superior Court Judge; that the suspension of magistrates is within the authority of the Chief District Court Judge; that the removal of magistrates is within the authority the Senior Resident Superior Court Judge, or any Superior Court Judge holding Court in the relevant county; and that administrative and supervisory authority over magistrates is vested in the Chief District Court Judge, pursuant to the general supervision of the Chief Justice of the Supreme Court. *Breedlove v. Warren*, 249 N.C. App. 472, 477, 790 S.E.2d 893, 896 (2016).

[5] Magistrates, therefore, are and must be subject to, supervision as required by law by the Chief District Court Judge of the county in which they are appointed (and, if appointed, the Chief Magistrate), and in addition, they are subject to sanction when they fail properly to discharge the duties and responsibilities of the Office of Magistrate or violate or attempt to violate the Rules of Conduct for Magistrates, knowingly assist or induce another to do so, or do so through the acts of another, as when they request or instruct an agent to do so on the magistrate's behalf.

[6] Many kinds of unlawful or unethical conduct reflect adversely on fitness to serve as an Officer of the District Court, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, but in some instances, may or may not have any specific connection to fitness to serve as a magistrate. Although a magistrate, like other citizens, is personally answerable to the entire criminal law and to matters of civil law, a magistrate is professionally answerable only for offenses that indicate lack of those characteristics relevant to service as a magistrate. Offenses involving violence, dishonesty, breach of trust, indecency, or interference with the administration of justice all fall within that category and are outlined or specifically referenced in these Rules of Professional Conduct or the official commentary. Moreover, a pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to the position and obligation of the magistrate.

[7] Rule 7 is not intended to impose a form of progressive discipline to suggest that progressive steps must be taken, such as, instances where there readily appears to have occurred an instance or instances of willful misconduct in office or conduct prejudicial to the administration of justice that brings the judicial office into disrepute. In appropriate circumstances as determined by the magistrate's supervisors, that this, the Chief District Court Judge or the Chief Magistrate, where appointed and granted such supervisory authority, an approach using a progressive discipline framework may be advisable. Accordingly, Rule 7 contemplates the use of supervisory sanctions:

(1) Counseling statement, which is a form of admonition or instruction, which may be oral, but is preferably a written form of sanction, imposed in cases in which a magistrate has committed a minor violation of the Rules of Conduct for Magistrates; or

(2) Training, which may be either initial or remedial training, at the direction of the supervisory authority (that is, the Chief District Court Judge or the Chief Magistrate, if appointed and delegated that authority) for the purpose of improving any substantive deficiency; or

(3) Reprimand, which is a written form of discipline more serious than a counseling statement or admonition, and which may be issued in cases in which a magistrate has violated one or more provisions of the Rules of Conduct, but where the protection of a party to a case, a member or employee of a public agency, the administration of justice, the legal profession, the judiciary, the justice system, or the procedural or substantive integrity of a case, or a matter coming before a magistrate, or protection of the public, but the protection of the public or any of the other persons or entities or interests concerned does not require a censure, and which should generally be reserved for cases in which the magistrate's conduct received substantial notoriety or has caused harm or potential harm to a party, the administration of justice, the profession, or members of the public or the like; or

(4) Censure, which is a written form of discipline more serious than a reprimand, issued in cases in which a magistrate has violated one or more provisions of the Rules of Conduct for Magistrates and has caused harm, or the conduct carried a potential significant harm to a party to a case, a member or employee of a public agency, the administration of justice, the legal profession, the judiciary, the justice system, the integrity of a case or aspects of a case, or to members of the public, but the protection of the public or any of the other persons or entities or interests concerned does not require a more severe or more expansive action; or

(5) Probation for the purposes of this Rule is defined as a specific set of terms and conditions imposed as a sanction and corrective measure to ensure that a magistrate complies with the conditions for a specific period of time in lieu of or in combination with the imposition of other sanctions where noncompliance with, or violations of, the obligations of the magistrate are found to exist, but the supervisory authority does not recommend or proceed with suspension or removal, but may do so in the event of another or subsequent violation or the discovery of conduct previously committed but not then known to the supervisory authority; or

(6) Recommendation of Suspension is in effect a more serious public declaration than a public censure which a Chief Magistrate may recommend for an egregious or dangerous violation of law, including the Rules of Conduct, and the Chief District Judge may impose an immediate suspension for up to three (3) days without prior notice of hearing in order to protect a person or persons entitled to such protection or to protect the functions and integrity of the judiciary and the system of justice only if it clearly appears from specific facts found that immediate and irreparable injury, loss, or damage will result before the magistrate opposing such an immediate sanction can be heard in opposition; or,

(7) Recommendation of Removal is often accompanied by a Recommendation of Suspension. Such a recommendation may be made for the removal of the magistrate as provided under applicable law.

[8] A Supervisory Authority (that is, the Chief District Court Judge or where designated a Chief Magistrate) may employ a Counseling Statement or Disciplinary Action form (such as the sample Counseling / Disciplinary Action form recommended by the Administrative Office of the Courts, Human Resources Division) to document verbal consults or written warnings. (This sample form may be modified, and addenda attached).

[9] The elements of a Counseling Statement/Disciplinary Action form, (including a Warning or Reprimand) may take the form of a memorandum, letter, or the like, which (1) clearly identifies the problem or violations of the requisite standards of performance, conduct, or behavior; 2) describes how it impacts the office of magistrate or the workplace; and 3) sets the goals or expectations for improvement for each. It should also indicate steps that may be taken if a magistrate fails to achieve and maintain the expectations outlined by a supervisory authority.

[10] For some issues it may be appropriate to set a deadline for meeting the outlined goals or expectations. If the Supervisory Authority sets a deadline, it is important to meet again at that time to review the magistrate's progress and take any additional actions, if necessary.

[11] The counseling or disciplinary document should have a place for both a supervisory authority's signature, magistrate's signature, and the date of their meeting. Language in the counseling or disciplinary document should note a magistrate's signature is to acknowledge receipt of the document but is not an admission of responsibility.

[12] In providing a formal written warning, the Supervisory Authority should attempt to obtain the magistrate's signature on the form. The magistrate should be informed orally as well as through the written form that as the Rule provides, the signature magistrate's signature is merely an acknowledgment of receipt, not an admission of responsibility. If an employee refuses to sign the document, the Supervisory Authority should note that refusal in the space reserved for the magistrate's signature line.

[13] If a magistrate refuses to sign, the Supervisory Authority may, but is not required to, treat the refusal as a tacit admission of the magistrate's violation applicable standards of performance, conduct, or behavior giving rise to the counseling statement, warning or reprimand or of conduct prejudicial to the administration of justice. Even in the absence of the magistrate's signature, the magistrate should be advised that regardless of his or her signature, the expectation to achieve and maintain performance, conduct, or behavior improvements remain.

[14] Additionally, the magistrate should be permitted to provide his or her own written comments to the document.

[15] The magistrate should be provided a copy of the document, and a copy should be retained in the personnel file of the magistrate unless and until subject to removal as consistent with these Rules and other applicable North Carolina law or upon agreement by both the supervisory authority and the magistrate.

[16] Appropriate documentation is important to both the Supervisory Authority and the magistrate. Written warnings convey the seriousness of the issue to the magistrate. They also are a contemporaneous record of the efforts of the Supervisory Authority to change behavior or performance and may be helpful in the event that additional disciplinary action or a statutory removal proceeding becomes warranted.

[17] The North Carolina Constitution requires the Legislature to enact laws providing for the removal of magistrates in the event of misconduct. N.C. Const. art. IV, § 17(3). Pursuant to this constitutional mandate, the North Carolina General Assembly enacted N.C. Gen. Stat. § 7A-173, which provides the substantive and procedural aspects of the removal of a magistrate, specifies the procedure and grounds by which a magistrate may be suspended and removed from office, and which is, of necessity, controlling in circumstances involving suspension or removal from the Office of Magistrate.

[18] "Grounds for suspension or removal of a magistrate are the same as for a judge of the General Court of Justice." N.C. Gen. Stat. § 7A-173(a). A judge may be censured or removed from office for (1) willful misconduct in office, (2) willful and persistent failure to perform his duties, (3) habitual intemperance, (4) conviction of a crime involving moral turpitude, or (5) conduct prejudicial to the administration of justice that brings the judicial office into disrepute. N.C. Gen. Stat. § 7A-376.

[19] Under N.C. Gen. Stat. § 7A-173, if a Superior Court Judge finds that grounds for removal of the magistrate exist, the judge shall enter an order permanently removing the magistrate from office and terminating the magistrate's salary.

notes: