

North Carolina Rules of Conduct for Magistrates

With Commentary

Preamble

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

Rule 1

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

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

Commentary

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

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

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

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

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

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

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

Rule 2

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

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

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

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

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

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

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

Commentary

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

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

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

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

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

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

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

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

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

Rule 3

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

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

B. Adjudicative responsibilities.

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

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

(3) A magistrate should be patient, dignified, and courteous to applicants, litigants, witnesses, lawyers, law enforcement officers, and others with whom the magistrate deals in the magistrate's official capacity and should require similar conduct of the persons involved in the proceedings.

(4) A magistrate should accord to every person who is legally interested in a proceeding, including any person or such person's lawyer, or any entity, including the State, the full right to be heard according to law.

(5) Except as authorized by law, the magistrate should neither knowingly initiate nor knowingly consider ex parte or other communications concerning the matters involved in a pending proceeding. A magistrate, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before the magistrate.

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

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

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

C. Administrative responsibilities.

(1) A magistrate should

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

(b) maintain professional competence in:

(i) judicial administration,

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

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

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

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

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

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

E. Duty to Disqualify or Recuse

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

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

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

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

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

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

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

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

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

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

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

(3) For the purposes of this section:

- (a) The degree of relationship is calculated according to the civil law system;
- (b) “Fiduciary” includes such relationships as executor, administrator, trustee, and guardian;
- (c) “Financial interest” means ownership of a substantial legal or equitable interest (i.e., an interest that would be significantly affected in value by the outcome of the subject legal proceeding), or a relationship as director or other active participant in the affairs of a party, except that:
 - (i) ownership in a mutual or common investment fund that holds securities is not a substantial “financial interest” in such securities unless the magistrate participates in the management of the fund;
 - (ii) an office in an educational, cultural, historical, religious, charitable, fraternal, or civic organization is not a “financial interest” in securities held by the organization.

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

Commentary

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

[2] The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed. The failure to do so prejudices the administration of justice. *See In re Edens*, 290 N.C. 299, 226 S.E.2d 5 (1976) (censuring a judge for disposing of a criminal case outside the courtroom when court was not in session and without notice to or input from the assistant district attorney who was prosecuting the docket).

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

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

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

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

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

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

Rule 4

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

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

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

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

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

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

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

Commentary

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

Rule 5

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

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

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

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

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

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

C. Financial activities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Commentary

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

Rule 6

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

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

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

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

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

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

- (1) act as a leader of or hold an office in a political organization; or
- (2) using the title of magistrate, make speeches for a political organization or non-judicial candidate, or use the prestige of the magistrate’s office to publicly endorse, support, oppose, or criticize a candidate for non-judicial public office; or
- (3) solicit funds on behalf of a political party, organization, or an individual seeking election to a non-judicial office, by specifically asking for such contributions in person, by telephone, by electronic media, or letter; or
- (4) endorse a candidate for public office except a candidate for judicial office.

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

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

Commentary

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

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

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

Rule 7

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

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

- (1) failing to follow a Chief District Court Judge’s administrative directives;
- (2) failing to comply and follow the North Carolina Rules of Conduct for Magistrates;
- (3) willful misconduct in office;
- (4) willful and persistent failure to perform the magistrate’s duties;
- (5) habitual intemperance;
- (6) a conviction of a crime involving moral turpitude;
- (7) conduct prejudicial to the administration of justice that brings the judicial office into disrepute; or
- (8) engaging in any other conduct that could serve as a basis for removal under N.C. Gen. Stat. § 7A-173.

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

- (1) counseling, either orally or in writing;
- (2) a recommendation or directive for additional training;
- (3) a written warning or reprimand; or
- (4) the filing of sworn written charges in the Office of Clerk of Superior Court for the county in which the magistrate resides, and participation in subsequent proceedings.

C. Acknowledging Discipline.

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

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

Commentary

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

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

Adopted on October 1, 2021



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