

CANONS OF CONDUCT FOR VIRGINIA MAGISTRATES

Magistrates are independent judicial officers. They make decisions that directly impact the liberty, reputation and economic interests of people. Therefore, magistrates should exercise a high degree of circumspection, professionalism, dignity, and conscientiousness in performing their magisterial duties.

These Canons of Conduct are intended to establish standards for the ethical conduct of magistrates. They consist of broad statements called Canons, specific rules set forth in Sections under each Canon, and Commentary. The text of the Canons and the Sections is authoritative. Each Commentary, through explanation and example, is advisory and provides guidance with respect to the purpose and meaning of the Canons and Sections. The Commentary is not intended as a statement of additional rules, but as an amplification of the Canons and Sections. When the text uses "shall" or "shall not" or "must" or "must not" it is intended to impose binding obligations, the violation of which can result in disciplinary action. When "should" or "should not" is used, the text is intended as a statement of what is or is not appropriate conduct but not as a binding rule under which a magistrate may be disciplined. When "may" is used, it denotes permissible discretion or, depending on the context, it refers to action that is not covered by specific proscriptions.

These Canons shall apply to all magistrates, chief magistrates, and magistrate regional supervisors and the term "magistrate" shall be understood to include magistrates, chief magistrates, and magistrate regional supervisors.

The Canons and Sections are rules of reason. They must be applied consistent with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. A magistrate, chief magistrate, or magistrate regional supervisor may be disciplined, including termination, for failure to comply with these Canons.

Canon 1

A MAGISTRATE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY.

A magistrate shall establish, maintain and enforce high standards of conduct, and shall personally observe those standards, so that the integrity and independence of the judicial system will be preserved. The provisions of these Canons are to be construed and applied to further that objective.

- *Commentary*

Although magistrates exercise discretion when making specific decisions in the performance of their duties, they must comply with the law, including the provisions of these Canons. Public confidence in the impartiality of the judicial system depends upon the adherence of each magistrate to this responsibility. Conversely, violation of this Canon, or other Canons and other ethical and legal

obligations, diminishes public confidence in the judicial system and thereby does injury to the system of government under law.

Canon 2

A MAGISTRATE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE MAGISTRATE'S ACTIVITIES.

A. A magistrate shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the office of magistrate and of the entire court system. A magistrate must avoid all impropriety and all appearance of impropriety.

- *Commentary*

Public confidence in the judicial system is eroded by irresponsible or improper conduct by magistrates.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a magistrate. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by magistrates that is harmful, although not specifically mentioned in the Canons. Actual improprieties under this standard include violations of law, court rules or other specific provisions of these Canons. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the magistrate's ability to perform the magistrate's responsibilities with integrity and impartiality is impaired. A magistrate must therefore accept restrictions on the magistrate's conduct that might be viewed as burdensome by a private citizen and should do so freely and willingly.

B. A magistrate shall not allow family, social, political or other relationships to influence the magistrate's conduct or judgment. A magistrate shall not in any way use the office of magistrate, or his or her prestige as a judicial officer to advance the private interests of the magistrate or others; nor shall a magistrate convey or permit others to convey the impression that they are in a special position to influence the magistrate.

- *Commentary:*

Respect for the office of magistrate facilitates the orderly conduct of legitimate magistrate functions. Magistrates should distinguish between proper and improper use of the office in all of their activities. For example, it would be highly improper for a magistrate to allude to his or her position to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, magistrate letterhead – or other magistrate

system resources – must not be used for conducting a magistrate's personal business.

- C. A magistrate shall not hold membership in any organization that practices invidious discrimination on the basis of race, gender, religion or national origin.

▪ *Commentary*

Membership of a magistrate in an organization that practices invidious discrimination gives rise to the perception that the magistrate's impartiality is impaired. Section 2C refers to the current practices of the organization. Whether an organization practices invidious discrimination is often a complex question to which magistrates should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on how the organization selects members and 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 that it is in fact and effect an intimate, purely private organization. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, gender or national origin persons who would otherwise be admitted to membership.

Although Section 2C relates only to membership in organizations that invidiously discriminate on the basis of race, gender, religion or national origin, a magistrate's membership in an organization that engages in any discriminatory membership practices prohibited by the law of the jurisdiction also violates Canon 2 and Section 2A and gives the appearance of impropriety. In addition, it would be a violation of Canon 2 and Section 2A for a magistrate to arrange a meeting at an organization's facilities that the magistrate knows practices invidious discrimination on the basis of race, gender, religion or national origin in its membership or other policies, or for the magistrate to regularly use such a facility. Moreover, public manifestation by a magistrate of the magistrate's knowing approval of invidious discrimination on any basis gives the appearance of impropriety under Canon 2 and diminishes public confidence in the integrity and impartiality of the judicial system, in violation of Section 2A.

Canon 3

A MAGISTRATE SHALL PERFORM THE DUTIES OF THE 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.

- *Commentary*

A magistrate should not engage in any outside employment or other work, unrelated to her or his magistrate duties during the time when carrying out magisterial duties.

B. Official Responsibilities. In the performance of magistrate duties, the following standards apply:

1. A magistrate shall be faithful to the law and maintain professional competence in it. A magistrate shall not be swayed by partisan interests, public clamor or fear of criticism.

2. A magistrate shall require order, decorum, and civility in proceedings before the magistrate.

- *Commentary*

"Require." The rules prescribing that a magistrate "require" certain conduct of others are, like all of the rules in these Canons, rules of reason. The use of the term "require" in that context means a magistrate is to exercise reasonable direction and control over the conduct of those persons.

3. A magistrate shall be patient, dignified and courteous to all with whom the magistrate deals in an official capacity, and shall require similar conduct of others.

- *Commentary*

The duty to be patient is not inconsistent with the duty to dispose promptly of the business of the office. Magistrates should be efficient and businesslike while being patient and deliberate.

4. A magistrate shall perform his or her duties without bias or prejudice. A magistrate shall not, in the performance of his or her official duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, gender, religion, national origin, disability, age, or socioeconomic status.

- *Commentary*

A magistrate must perform official duties impartially and fairly. A magistrate who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judicial system into disrepute. A magistrate must be alert to avoid behavior that may be perceived as prejudicial.

This provision 3B(4) does not preclude proper judicial consideration when race, gender, religion, national origin, disability, age, or socioeconomic status, or similar factors, are issues in the proceeding.

A magistrate must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment or any other type of harassment.

5. A magistrate shall dispose promptly of the business of the office.

▪ *Commentary*

In disposing of matters promptly, a magistrate must demonstrate due regard for the rights of the parties.

Prompt disposition of the magistrate's business requires a magistrate to be punctual and expeditious.

6. A magistrate shall abstain from public comment about a pending, impending or concluded proceeding in any court or magistrate's office. Furthermore, a magistrate shall not disclose or use, for any purpose unrelated to official duties, nonpublic information acquired in a magistrate capacity. This provision does not prohibit a magistrate 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 Canon 4. This provision does not prohibit a magistrate from commenting on proceedings in which the magistrate is a litigant in a personal capacity.

▪ *Commentary*

The requirement that magistrates abstain from public comment regarding a pending or impending proceeding continues during any appellate process.

C. Administrative Responsibilities

A magistrate shall diligently and promptly discharge the magistrate's administrative responsibilities without bias or prejudice and maintain professional competence in these functions.

D. Disqualification

A magistrate shall disqualify himself or herself in any proceeding in which the magistrate's impartiality might reasonably be questioned, including but not limited to instances where:

- the magistrate has a personal bias or prejudice concerning an individual or personal knowledge of disputed facts concerning the matter before the magistrate;
- the magistrate's personal interest or those of the magistrate's immediate family members (brother, sister, son, spouse, daughter, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother- or sister-in-law) are involved;
- the magistrate served as a 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 has been a material witness concerning it; or
- the magistrate may be reasonably perceived to be biased because of other activities in which the magistrate routinely engages.

▪ *Commentary*

Under this rule, a magistrate is disqualified whenever the magistrate's impartiality might reasonably be questioned, regardless of whether any of the specific rules in Section 3D apply.

E. Disciplinary Responsibilities

A magistrate who receives reliable information indicating a substantial likelihood that another magistrate has committed a violation of these Canons should take appropriate action. A magistrate having knowledge that another magistrate has committed a violation of these Canons that raises a substantial question as to the other magistrate's fitness for office should inform the chief magistrate and the regional magistrate supervisor.

A magistrate who receives reliable information indicating a substantial likelihood that a lawyer has committed a violation of the Virginia Rules of Professional Conduct should take appropriate action.

▪ *Commentary*

“Appropriate action” may include direct communication with the magistrate or lawyer who has committed the violation, other direct action if available, and reporting the violation to the appropriate authority or other agency or body.

Canon 4

A MAGISTRATE MAY ENGAGE IN ACTIVITIES DESIGNED TO IMPROVE THE LAW, THE LEGAL SYSTEM, AND THE ADMINISTRATION OF JUSTICE, AND SHALL CONDUCT ANY EXTRA-MAGISTERIAL ACTIVITIES IN A MANNER THAT MINIMIZES THE RISK OF CONFLICT WITH MAGISTERIAL OBLIGATIONS.

A. Non-Work Activities in General. A magistrate shall conduct all of the magistrate's non-work activities so that they do not:

- cast doubt on the magistrate's capacity to put his or her magisterial duties first or to act impartially;
- demean the magistrate's office; or
- interfere with the proper performance of his or her official duties.

▪ *Commentary*

Expressions of bias or prejudice by a magistrate, even outside the magistrate's official activities, may cast doubt on the magistrate's capacity to act impartially as a magistrate. Expressions which may do so include jokes or other remarks demeaning individuals on the basis of their race, gender, religion, national origin, disability, age, or socioeconomic status.

B. Avocational Activities. A magistrate may speak, write, lecture, teach and participate in other activities concerning the law, the legal system, the administration of justice and non-legal subjects, subject to the requirements of these Canons.

C. Governmental, Civic or Charitable Activities.

1. A magistrate shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law, the legal system or the administration of justice or except when acting pro se in a matter involving the magistrate or the magistrate's interests.
2. A magistrate shall not accept appointment to a governmental committee or commission or other governmental position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system or the administration of justice. A magistrate may, however, represent a country, state or locality on ceremonial occasions or in connection with historical, educational or cultural activities.
3. A magistrate may serve as an officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice or of an educational, religious, charitable,

fraternal or civic organization not conducted for profit, subject to the requirements of these Canons.

- *Commentary*

Service or participation on any governmental committee or commission or other governmental position outside of the Judicial Branch should be approved in advance. To the extent the committee is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system or the administration of justice, a magistrate should not participate in consideration of these issues.

Canon 5

A MAGISTRATE MAY NOT ENGAGE IN FINANCIAL OR BUSINESS DEALINGS INCONSISTENT WITH THE ROLE OF A MAGISTRATE AND MAY NOT ENGAGE IN ANY OUTSIDE WORK WITHOUT THE APPROVAL OF THE EXECUTIVE SECRETARY OF THE SUPREME COURT OF VIRGINIA.

A. Financial Activities

A magistrate shall not engage in financial and business dealings that:

- may reasonably be perceived to exploit the magistrate's position;
- involve the magistrate in frequent transactions or continuing business relationships with those persons likely to conduct official business with the magistrate; or
- tend to reflect adversely on the magistrate's impartiality or interfere with the proper performance of official duties.

- *Commentary*

A magistrate must avoid financial and business dealings that involve the magistrate in frequent transactions or continuing business relationships with persons likely to come before the magistrate. In addition, a magistrate should discourage members of the magistrate's family from engaging in dealings that would reasonably appear to exploit the magistrate's position. This rule is necessary to avoid creating an appearance of exploitation of office or favoritism and to minimize the potential for disqualification.

A magistrate shall not accept, and shall urge members of the magistrate's family residing in the magistrate's household not to accept, a gift, favor or loan from anyone except for:

- a gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use,

or an invitation to the magistrate and the magistrate's spouse or guest to attend a function or an activity devoted to the improvement of the law, the legal system or the administration of justice;

- a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member of a magistrate residing in the magistrate's household, including gifts, awards and benefits for the use of both the spouse or other family member and the magistrate (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the magistrate in the performance of official duties;
- ordinary social hospitality;
- a gift from a relative or friend, for a special occasion, such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship;
- a gift, favor or loan from a relative or close personal friend whose appearance before the magistrate would in any event require disqualification;
- a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not magistrates;
- a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants.

▪ *Commentary*

Because a gift, favor or loan to a member of the magistrate's family residing in the magistrate's household might be viewed as intended to influence the magistrate, a magistrate must inform those family members of the relevant ethical constraints upon the magistrate in this regard and discourage those family members from violating them. A magistrate cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the magistrate's household.

B. **Outside Employment.** A magistrate may not engage in any other activity for financial gain during the hours that he is serving on duty as a magistrate. A magistrate may not be employed outside his duty hours without the prior written approval of the Executive Secretary of the Supreme Court of Virginia. A magistrate may not work for any entity which frequently and regularly appears before a magistrate's office. A magistrate may not undertake any outside employment which calls into question the magistrate's impartiality, impairs the magistrate's ability to execute magisterial tasks, or which creates the appearance of impropriety.

A magistrate may not work for any agency, or hold office, in the Executive Branch or Legislative Branch of government, or in another level of the Judicial Branch, whether at the state, federal or local level. A magistrate may not work in the office of an Attorney for the Commonwealth as an attorney or non-attorney staff. A magistrate may not work or hold office in any part of the Judicial Branch of government except (i) as a magistrate regional supervisor for the Office of the Executive Secretary of the Supreme Court of Virginia or (ii) to assist in a general district court clerk's office on a part-time basis when authorized by the Committee on District Courts pursuant to Virginia Code § 19.2-37.

- C. Practice of Law. (i) No magistrate appointed after July 1, 2008 may engage in the practice of law. (ii) Any magistrate initially appointed prior to July 1, 2008 may only engage in the practice of law with the permission of the Executive Secretary of the Supreme Court of Virginia and subject to such terms and conditions as the Executive Secretary may impose. (iii) Any magistrate who is a lawyer shall not practice criminal defense law in any court in the magisterial region for which he is appointed.

Canon 6

A MAGISTRATE SHALL REFRAIN FROM POLITICAL ACTIVITY INAPPROPRIATE TO THE OFFICE.

A magistrate shall not:

- act as a leader or hold any office in a political organization;
- make speeches for a political organization or candidate or publicly endorse or oppose a candidate for public office; or
- solicit funds for or make contributions to a political organization or candidate.

A magistrate who seeks elective public office shall resign from the office of magistrate upon becoming a candidate either in a party primary election, or other nominating process, or in a general election for public office.

Magistrates shall not use or give the appearance of using their offices or positions as judicial officers to support the campaigns of candidates for elective public office. No candidacy for office shall be discussed with the public during working hours. Brochures and other documents used for campaigns shall not be displayed in or distributed from the magistrate's office. A magistrate shall not make speeches, write letters to an editorial page or publish an article about a political candidate or party.

▪ *Commentary*

The restrictions on political activity are not intended to prohibit the expression of personal political views in a solely individual capacity within a private context, but, rather, to ensure that

the court system is not associated with any political candidate, political party or political allegiance. All magistrates have the responsibility to assure that any personal opinions offered are represented as personal opinions only and in no way represent court system views or positions.

Canon 7

SANCTION FOR NONCOMPLIANCE.

Failure to comply with these Canons may result in censure or removal by the Executive Secretary of the Supreme Court of Virginia.

Canon 8

EFFECTIVE DATE.

These Canons are promulgated by the Executive Secretary of the Supreme Court of Virginia pursuant to Virginia Code §§ 19.2-35, -37, and -43. They are effective on November 16, 2009.