

## Judicial Inquiry Commission

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This is in response to your request for an advisory opinion from the Judicial Inquiry Commission. Your question is whether municipal court magistrates are subject to the Alabama Canons of Judicial Ethics.

It is the opinion of this Commission that the Alabama Canons of Judicial Ethics do not apply to municipal court magistrates.

The Alabama Canons of Judicial Ethics “govern the conduct of members of the judiciary.” Preamble, Canons of Judicial Ethics. Certain Canons are specifically made applicable to part-time judges, judges pro tempore, and probate judges. See Compliance With The Canons of Judicial Ethics, Canons of Judicial Ethics. Magistrates are nowhere mentioned in the Canons.

Municipal court magistrates are administrative officers with limited judicial powers.

“The municipal court is authorized to create an ‘administrative agency empowered to provide expeditious service in connection with administrative adjudication of ordinance violations, the handling of uniform traffic tickets and complaints, the issuance of arrest warrants and other powers provided by law.’ (citing Ala. Code 1975, § 12-14-50) The magistrates “shall be considered, the chief officers of such administrative agency.’ [citing § 12-14-50(a)] The magistrate must be neutral and detached from all law enforcement activities. The general powers of the magistrate include the following: ‘(1) Issuance of arrest warrants; (2) Granting of bail in minor misdemeanor prosecutions; (3) Receiving of pleas of guilty in minor misdemeanor cases where a schedule of fines has been prescribed by rule; (4) Accountability to the municipal court for all uniform traffic tickets and complaints issued, for all monies received, and for any records of offenses; and (5) Such other authority as may be granted by law.’ Magistrates are protected by judicial immunity while engaging in the judicial function of issuing warrants, provided that the magistrate does not act with malice.”

T. Bishop, Municipal Courts § 2.17 at 22 (1991) (footnotes omitted except where noted). “Court magistrates operate under the administrative direction of the municipal court clerk. Municipal Courts at 105. The appointment of magistrates is controlled by Rule 18 of the Alabama Rules of

Judicial Administration, Municipal Courts at 8, and there is no requirement that a magistrate be licensed to practice law in Alabama.

Section 6.01(b) of Amendment 328 to the Constitution of Alabama of 1901 provides:

“The legislature may create judicial officers with authority to issue warrants and may vest in administrative agencies established by law such judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes for which the agencies are created.”

While engaging in judicial functions, a magistrate “may well be termed a ‘judicial officer.’” Shadwick v. City of Tampa, 407 U.S. 345, 351, 92 S.Ct. 2119, 2123, 32 L.Ed.2d 783 (1972). However, it is more correct to state that a municipal court magistrate is an administrative officer with limited judicial powers.

A magistrate is neither a judge nor a member of the judiciary. Section 6.07 of Amendment 328 provides:

“6.07. Qualifications of judges.

Judges of the supreme court, courts of appeals, circuit court and district court shall be licensed to practice law in this state and have such other qualifications as the legislature may prescribe. Judges of the probate court shall have such qualifications as may be provided by law.”

Municipal judges are covered in §6.065 which provides in pertinent part that “[j]udges of municipal courts shall be licensed to practice law in the state and have such other qualifications as the legislature may prescribe.”

Significantly, §6.08(c) of Amendment 328 provides: “The supreme court shall adopt rules of conduct and canons of ethics, not inconsistent with the provisions of this Constitution, for the judges of all courts of this State.” (emphasis added). Likewise, the jurisdiction of the Judicial Inquiry Commission is limited to ethical “complaints concerning any judge of a court of the judicial system of this state.” Amendment 328, § 6.17(b) Since municipal court magistrates are not “judges” of any court, they are not subject to the Alabama Canons of Judicial Ethics.

The Commission's holding that municipal magistrates are not subject to the Canons of Judicial Ethics in no way should be construed as any attempt to attenuate or detract from the extremely significant and important task performed by the magistrates of this State. The Commission takes this opportunity to applaud their diligence and hard work and to recognize their importance in Alabama's judicial system.

This opinion has been approved by the members of the Judicial Inquiry Commission. Please contact me if you have any questions on this or any other matter.