

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019**

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HOUSE BILL 154

Short Title: Conduct Code and Discipline for Magistrates. (Public)

Sponsors: Representatives John, Rogers, and Morey (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary, if favorable, Rules, Calendar, and Operations of the House

February 25, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO DIRECT THE ADMINISTRATIVE OFFICE OF THE COURTS TO DEVELOP
3 A CODE OF CONDUCT FOR ALL MAGISTRATES; TO GIVE AUTHORITY FOR
4 CHIEF DISTRICT COURT JUDGES TO DISCIPLINE MAGISTRATES; TO ALLOW
5 FOR MAGISTRATES TO BE ASSIGNED TO TEMPORARY DUTY IN ANOTHER
6 COUNTY; AND TO REQUIRE CHIEF DISTRICT COURT JUDGES OF EACH COUNTY
7 TO APPOINT A CHIEF MAGISTRATE, AS RECOMMENDED BY THE NORTH
8 CAROLINA COURTS COMMISSION.

9 The General Assembly of North Carolina enacts:

10 **SECTION 1.(a)** Code of Conduct. – The Administrative Office of the Courts shall
11 develop a Code of Conduct for all magistrates. The purpose of the Code of Conduct is to create
12 uniformity among all districts. The Code of Conduct shall provide guidance to magistrates
13 regarding (i) standards of professional conduct and timeliness, (ii) required duties and
14 responsibilities, (iii) methods for ethical decision making, and (iv) any other information that is
15 deemed relevant by the Administrative Office of the Courts.

16 **SECTION 1.(b)** Time Frame. – The Administrative Office of the Courts shall
17 establish the Code of Conduct for magistrates required by subsection (a) of this section by July
18 1, 2020.

19 **SECTION 2.** G.S. 7A-146 reads as rewritten:

20 **"§ 7A-146. Administrative authority and duties of chief district judge.**

21 The chief district judge, subject to the general supervision of the Chief Justice of the Supreme
22 Court, has administrative supervision and authority over the operation of the district courts and
23 magistrates in his district. These powers and duties include, but are not limited to, the following:

- 24 (1) Arranging schedules and assigning district judges for sessions of district
25 courts.
- 26 (2) Arranging or supervising the calendaring of noncriminal matters for trial or
27 hearing.
- 28 (3) Supervising the clerk of superior court in the discharge of the clerical
29 functions of the district court.
- 30 (4) Assigning matters to magistrates, and consistent with the salaries set by the
31 Administrative Officer of the Courts, prescribing times and places at which
32 magistrates shall be available for the performance of their duties; however,
33 the chief district judge may in writing delegate his authority to prescribe times
34 and places at which magistrates in a particular county shall be available for
35 the performance of their duties to another district court judge or the clerk of



1 the superior court, or the judge may ~~appoint a chief magistrate to fulfill~~
 2 ~~delegate~~ some or all of the duties under subdivision (12) of this ~~section,~~
 3 ~~section to the chief magistrate,~~ and the person to whom such authority is
 4 delegated shall make monthly reports to the chief district judge of the times
 5 and places actually served by each magistrate.

- 6 (5) Making arrangements with proper authorities for the drawing of civil court
 7 jury panels and determining which sessions of district court shall be jury
 8 sessions.
- 9 (6) Arranging for the reporting of civil cases by court reporters or other authorized
 10 means.
- 11 (7) Arranging sessions, to the extent practicable for the trial of specialized cases,
 12 including traffic, domestic relations, and other types of cases, and assigning
 13 district judges to preside over these sessions so as to permit maximum
 14 practicable specialization by individual judges.
- 15 (8) Repealed by Session Laws 1991 (Regular Session, 1992), c. 900, s. 118(b),
 16 effective July 15, 1992.
- 17 (9) Assigning magistrates ~~during an emergency~~ to temporary duty outside the
 18 county of their residence but within that district pursuant to the policies and
 19 procedures prescribed under G.S. 7A-343(11); and, upon the request of a chief
 20 district judge of an adjoining district and upon the approval of the
 21 Administrative Officer of the Courts, to temporary duty in the district of the
 22 requesting chief district judge pursuant to the policies and procedures
 23 prescribed under G.S. 7A-343(11).
- 24 (10) Designating another district judge of his district as acting chief district judge,
 25 to act during the absence or disability of the chief district judge.
- 26 (11) Designating certain magistrates to appoint counsel and accept waivers of
 27 counsel pursuant to Article 36 of this Chapter. This designation does not give
 28 any magistrate the authority to appoint counsel or accept waivers of counsel
 29 for potentially capital offenses, as defined by rules adopted by the Office of
 30 Indigent Defense Services.
- 31 (12) Designating a full-time magistrate in ~~a each~~ county to serve as chief magistrate
 32 for that county for an indefinite term and at the judge's pleasure. The chief
 33 magistrate shall have the derivative administrative authority assigned by the
 34 chief district court judge under subdivision (4) of this section. ~~This~~
 35 ~~subdivision applies only to counties in which the chief district court judge~~
 36 ~~determines that designating a chief magistrate would be in the interest of~~
 37 ~~justice.~~
- 38 (13) Investigating complaints against magistrates. Upon investigation and written
 39 findings of misconduct, a chief district court judge may issue a letter of
 40 caution, a written reprimand, or suspend a magistrate without pay for no
 41 longer than 10 days within one pay period."

42 **SECTION 3.** G.S. 7A-171 reads as rewritten:

43 **"§ 7A-171. Numbers; appointment and terms; vacancies.**

44 (a) The General Assembly shall establish a minimum quota of magistrates for each
 45 county. In no county shall the minimum quota be less than one. The number of magistrates in a
 46 county, above the minimum quota set by the General Assembly, is determined by the
 47 Administrative Office of the Courts after consultation with the chief district court judge for the
 48 district in which the county is located.

49 (a1) The initial term of appointment for a magistrate is two years and subsequent terms
 50 shall be for a period of four years. The term of office begins on the first day of ~~January~~ February
 51 of the ~~odd-numbered~~ even-numbered year after appointment. The service of an individual as a

1 magistrate filling a vacancy as provided in subsection (d) of this section does not constitute an
2 initial term. For purposes of this section, any term of office for a magistrate who has served a
3 two-year term is for four years even if the two-year term of appointment was before the effective
4 date of this section, the term is after a break in service, or the term is for appointment in a different
5 county from the county where the two-year term of office was served.

6 (b) Not earlier than the Tuesday after the first Monday nor later than the third Monday in
7 ~~December~~ January of each even-numbered year, the clerk of the superior court shall submit to
8 the senior regular resident superior court judge of the district or set of districts as defined in
9 G.S. 7A-41.1(a) in which the clerk's county is located the names of two (or more, if requested by
10 the judge) nominees for each magisterial office for the county for which the term of office of the
11 magistrate holding that position shall expire on ~~December 31~~ January 31 of that year. Not later
12 than the fourth Monday in ~~December~~ January, the senior regular resident superior court judge
13 shall, from the nominations submitted by the clerk of the superior court, appoint magistrates to
14 fill the positions for each county of the judge's district or set of districts.

15 (c) If an additional magisterial office for a county is approved to commence on ~~January~~
16 ~~1~~ February 1 of an ~~odd-numbered~~ even-numbered year, the new position shall be filled as
17 provided in subsection (b) of this section. If the additional position takes effect at any other time,
18 it is to be filled as provided in subsection (d) of this section.

19 (d) Within 30 days after a vacancy in the office of magistrate occurs the clerk of superior
20 court shall submit to the senior regular resident superior court judge the names of two (or more,
21 if so requested by the judge) nominees for the office vacated. Within 15 days after receipt of the
22 nominations the senior regular resident superior court judge shall appoint from the nominations
23 received a magistrate who shall take office immediately and shall serve until ~~December 31~~
24 January 31 of the even-numbered year, and thereafter the position shall be filled as provided in
25 subsection (b) of this section."

26 **SECTION 4.** G.S. 7A-173 reads as rewritten:

27 "**§ 7A-173. ~~Suspension; Suspension pending removal; removal; reinstatement.~~**

28 (a) A magistrate may be suspended from performing the duties of ~~his office~~ the
29 magistrate's office pending removal from office by the chief district judge of the district court
30 district in which ~~his~~ the magistrate's county is located, or removed from office by the senior
31 regular resident superior court judge of, or any regular superior court judge holding court in, the
32 district or set of districts as defined in G.S. 7A-41.1(a) in which the county is located. Grounds
33 for suspension pending removal or removal are the same as for a judge of the General Court of
34 Justice.

35 (b) Suspension from performing the duties of the office may be ordered upon filing of
36 sworn written charges in the office of clerk of superior court for the county in which the
37 magistrate resides. If the chief district judge, upon examination of the sworn charges, finds that
38 the charges, if true, constitute grounds for removal, he may enter an order suspending the
39 magistrate from performing the duties of ~~his~~ the magistrate's office until a final determination of
40 the charges on the merits. During suspension pending removal the salary of the magistrate
41 continues.

42 (c) If a hearing, with or without suspension, is ordered, the magistrate against whom the
43 charges have been made shall be given immediate written notice of the proceedings and a true
44 copy of the charges, and the matter shall be set by the chief district judge for hearing before the
45 senior regular resident superior court judge or a regular superior court judge holding court in the
46 district or set of districts as defined in G.S. 7A-41.1(a) in which the county is located. The hearing
47 shall be held in a county within the district or set of districts not less than 10 days nor more than
48 30 days after the magistrate has received a copy of the charges. The hearing shall be open to the
49 public. All testimony offered shall be recorded. At the hearing the superior court judge shall
50 receive evidence, and make findings of fact and conclusions of law. If ~~he~~ the judge finds that
51 grounds for removal exist, ~~he~~ the judge shall enter an order permanently removing the magistrate

1 from office, and terminating ~~his~~ the magistrate's salary. If ~~he~~ the judge finds that no such grounds
2 exist, ~~he~~ the judge shall terminate the suspension, if any.

3 (d) A magistrate may appeal from an order of removal to the Court of Appeals on the
4 basis of error of law by the superior court judge. Pending decision of the case on appeal, the
5 magistrate shall not perform any of the duties of his office. If, upon final determination, ~~he~~ the
6 magistrate is ordered reinstated, either by the appellate division or by the superior court on
7 remand, ~~his~~ the magistrate's salary shall be restored from the date of the original order of removal.

8 (e) This section shall only apply to suspensions pending removal from office and does
9 not apply to disciplinary suspension pursuant to G.S. 7A-146."

10 **SECTION 5.** Section 3 of this act becomes effective December 1, 2019, and applies
11 to all current and future magistrates. Section 4 of this act becomes effective December 1, 2019,
12 and applies to all magistrates appointed to office on or after January 1, 2020; currently appointed
13 magistrates will finish their term as set at their appointment. The remainder of this act is effective
14 when it becomes law.