

ALABAMA RULES OF JUDICIAL ADMINISTRATION

Rule 18.

Magistrates.

I. *Administrative agency established.* There is hereby established an administrative agency within the State of Alabama to be known as the "magistrates agency," which shall be organized in two divisions: a district court magistrates agency division and a municipal court magistrates agency division. Magistrates in these divisions shall be composed of the persons and classes of persons, hereinafter described, who shall serve at the pleasure of the appointing authority, except as otherwise provided herein, and shall exercise the powers and authority granted by this rule, other applicable rules, and as provided by law.

(A) DISTRICT COURT MAGISTRATES AGENCY DIVISION.

(1) Selection of Magistrates in the District Court. The district court magistrates agency division shall include magistrates selected as follows:

(a) All clerks of the district courts and any person within the clerk's office appointed by the clerk to serve as a magistrate or warrant clerk;

(b) All persons serving as full-time magistrates or warrant clerks on September 1, 1976, including those magistrates or warrant clerks who are and will continue to be merit system employees;

(c) All persons appointed to serve as magistrates by the administrative director of courts ("ADC"), upon the written recommendations and nomination by the judge or judges and the clerk of the district court; and

(d) Persons appointed by the ADC to serve as district court warrant clerks upon the written recommendation of the district court judge or judges and the clerk of such court. However, the ADC is authorized to appoint any city clerk of a municipality with a population of 1,000 or more to such position. The power and authority of district court warrant clerks shall be limited to the issuance of arrest warrants, which shall be returnable to the district court.

(2) Authority of Magistrates in the District Court Magistrates Agency Division. Magistrates shall be considered the chief officers of the district court magistrates agency division, and shall be subject to the

administrative direction of the clerk of the district court. The powers of a district court magistrate, other than a warrant issuing magistrate whose power and authority is set out in subdivision I(A)(1)(d), shall be limited to:

(a) Issuance of arrest warrants and, where such magistrate is licensed to practice law in Alabama, issuance of search warrants;

(b) Setting bail when issuing arrests warrants in accordance with the discretionary bail schedule; provided, however, that no magistrate shall set bail for any offense in excess of the maximum amount posted in the bail schedule, unless approved by the court;

(c) Approving surety bonds and receiving cash bail in criminal prosecutions;

(d) Authorizing the release of defendants on their personal recognizance in misdemeanor prosecutions; and

(e) Receiving pleas of guilty in misdemeanor cases where a schedule of fines has been prescribed pursuant to Rule 20 of these rules.

The term "misdemeanor," as used in I(A)(2)(a) through (e), shall include municipal ordinance violations for municipalities electing to use the district court system.

(3) Transfer of Money and Records. On or before the tenth of each month, or upon order by the presiding judge of the district court, magistrates serving outside the office of the clerk of the district court shall transfer all moneys and records coming within their possession and control in their official capacity during the preceding calendar month to the district clerk's office for an accounting; provided, however, that all moneys and records relating to the summary disposition of traffic offenses shall be transferred to the clerk of the district court pursuant to Rule 19(C)(3) of these rules.

(4) Orientation and Certification of Magistrates in the District Court Magistrates Agency Division. Each magistrate in the district court, except for elected or appointed circuit and district court clerks, must, within 12 months of taking office, enroll in a magistrates' orientation and certification program approved by the Administrative Office of Courts ("AOC"). All magistrates, except elected or appointed circuit and district court clerks, shall complete that program in the manner and within the time prescribed by AOC. The ADC may waive the requirements of this subparagraph (4) as to a magistrate, either partially or completely, upon written request from the circuit or district court clerk. The ADC shall establish criteria on which

to base any such waivers.

(B) MUNICIPAL COURT MAGISTRATES AGENCY DIVISION.

(1) Selection of Magistrates in the Municipal court. The municipal court magistrates agency division shall be composed of magistrates selected as follows:

(a) All clerks of municipal courts and any person within the clerk's office designated by the ADC, upon written recommendation of the clerk to serve as magistrate; and

(b) All persons appointed to serve as magistrates by the ADC upon the written recommendation of the municipal judge or judges.

(2) Authority of Magistrates in the Municipal Court Magistrates Agency Division. Magistrates in the municipal court magistrates agency division shall be considered the chief officers of the municipal court administrative agency and shall be subject to the administrative direction of the clerk of the municipal court. The powers of a magistrate shall be limited to:

(a) Issuance of arrest warrants for municipal ordinance violations;

(b) Setting bail in accordance with the discretionary bail schedule and approving property, cash, and professional surety bonds upon a municipal judge's approval;

(c) Releasing defendants charged with municipal ordinance violations on their personal recognizance;

(d) Receiving pleas of guilty in municipal ordinance cases where a schedule of fines has been prescribed pursuant to Rule 20 of these Rules;

(e) Accountability to the municipal court for each Uniform Traffic Ticket and Complaint ("UTTC") issued, moneys received as the result of the issuance of UTTCs, and records of UTTC offenses;

(f) Accepting and screening affidavits of substantial hardship upon a municipal judge's approval and, if authorized by court order, assigning attorneys to represent indigents on a rotating basis from a list approved by the court;

(g) Conducting arraignments and setting nonguilty pleas for trial, upon a municipal judge's approval;

(h) Opening court and calling the docket, upon a municipal judge's approval;

(i) Granting continuances in municipal ordinance violation cases, upon a municipal judge's approval;

(j) Dismissing violations based on no driver's license, pursuant to § 32-6-9, Ala. Code 1975, where the defendant shows proof that he or she had a valid driver's license at the time the citation was written;

(k) Dismissing mandatory liability insurance violations pursuant to § 32-7A-20, Ala. Code 1975, where the defendant has produced satisfactory evidence that at the time of the citation the motor vehicle was covered by a liability insurance policy in accordance with § 32-7A-4, Ala. Code 1975;

(l) Dismissing equipment violations where a municipal ordinance allows and where the law enforcement officer signs the UTTC verifying that the equipment has been replaced; and

(m) Accepting payment for municipal parking tickets pursuant to Rule 19(B) and rendering administrative decisions regarding such tickets, in the event a dispute arises.

(3) Orientation and Certification of Magistrates in the Municipal Court Magistrates Agency Division. Each municipal court clerk must, within six months after taking office, enroll in a magistrates' orientation and certification program approved by AOC. Magistrates, other than municipal court clerks, shall, not later than six months from the date of their appointment, enroll in such an orientation and certification program. All magistrates, including municipal court clerks, shall complete that program in the manner and within the time prescribed by AOC. The ADC may waive the requirements of this subparagraph (3) as to a magistrate, including a municipal court clerk, either partially or completely, upon written request from the mayor of the municipality in whose court the magistrate serves that a waiver be granted because of a financial inability of the municipality to pay for the magistrate to attend the program. The ADC shall establish criteria on which to base any such waivers.

(4) Mandatory Continuing Education. After completing the certification program, each court clerk or magistrate must meet annual continuing educational requirements as prescribed by AOC.

II. *Recommendations and qualifications for appointment.*

(A) ELIGIBILITY. The positions of magistrate and warrant clerk are offices of public trust. Any person appointed as magistrate or warrant clerk must meet the general requirements established by law for public officers and, in addition, shall be neutral and detached from all law enforcement activities.

(B) RECOMMENDATIONS FOR APPOINTMENTS. All recommendations and nominations for persons to be appointed magistrate or warrant clerk pursuant to the provisions of this rule shall be in writing. It shall be the responsibility of each official recommending persons for such positions to ensure that they meet the eligibility requirements in II(A) at the time such persons are recommended and to advise the ADC of any fact or matter which may subsequently render such persons ineligible to hold office following such appointments.

III. *Notice of appointment.* Each appointment made pursuant to this rule on or after October 1, 1987, shall be in writing. A copy of the appointment letter shall be filed in the office of the district clerk making the appointment, where applicable, and a copy shall be forwarded to the ADC. For each person appointed by the ADC, a copy of the letter of appointment shall be filed with AOC and in the office of the district court clerk in the district wherein the person is serving or, for municipal court magistrates, in the office of the municipal court clerk in the municipality wherein the magistrate is serving.

IV. *Oath of office.* All magistrates and warrant clerks shall, before entering upon the duties of that office, take the oath of office prescribed in the Constitution of the State of Alabama, which must be written out and subscribed by the person taking the oath and accompanied by the certificate of the officer administering the same, specifying the day and the year it was taken; provided, however, that the oath of office taken by a district court clerk shall satisfy the requirements of this subdivision for those officers. For all district court magistrates, the oath, along with the certificate, shall be filed in the office of the probate judge, and a copy thereof shall be filed in the office of the district court clerk; provided, however, that this subdivision shall not be construed so as to require the district court clerk to file a separate oath of office as a magistrate. The oath and certificate for each magistrate in the municipal magistrates agency division shall be filed where other oaths of municipal officials are filed. Failure to file an oath as required by this subdivision shall not render invalid any acts of said magistrates.

[Amended 11-9-76; Amended 6-5-79, eff. 8-1-79; Amended 11-6-79, eff. 1-1-80; Amended 9-28-87, eff. 10-1-87; Amended 6-17-88, eff. 7-25-88; Amended 8-28-

92; Amended 2-14-95, eff. 4-1-95; Amended eff. 11-9-2006; Amended eff. 12-14-2007.]

**Comment to Amendment
Effective July 25, 1988**

This amendment reworded Rule 18 I.(A)(2)(b) so as to authorize district court magistrates to set bail in felony cases as well as in misdemeanor cases when issuing arrest warrants. This amendment was not intended to authorize magistrates to conduct bond hearings after an arrest has been made.

**Comment
(Amended effective June 22, 2007)**

Ala. Const. of 1901, Amend. 328, § 6.01(b) (Art. VI, § 139(b), Ala. Const. 1901 (Official Recomp.)) creates judicial officers with authority to issue warrants and vests those officers with judicial powers incident thereto. This rule, read in conjunction with Ala.Code 1975, §§ 12-14-50 and 12-17-250 and -251, establishes an administrative magistrates agency and further prescribes the duties and authority of such officers.

Subdivision I of the rule creates two divisions of the magistrates agency: one known as the “district court magistrates agency division” and the other referred to as the “municipal court magistrates agency division.” The composition of the division, manner of appointment of magistrates, and authority of magistrates will vary according to division.

The district court magistrates agency division, as provided in subdivision I(A), shall be composed of the district court clerk and persons appointed to serve as magistrate or warrant clerk for the district court. A person serving within the district clerk’s office may be appointed by the clerk to serve as magistrate or warrant clerk. All other appointments must be made by the Administrative Director of Courts (“ADC”) upon written recommendation by the district judge or judges and clerk of the district court. The municipal court magistrates agency division, as provided in subdivision I(B), shall consist of municipal court clerks and persons appointed by the ADC to serve as magistrates.

Pursuant to subdivisions I(A)(2) and I(B)(2), magistrates are authorized to perform limited judicial functions such as issuing arrest warrants, approving surety bonds, receiving cash bail, and in misdemeanor and municipal ordinance cases, setting bail, releasing defendants on their own recognizance, and receiving guilty pleas. However, the authority granted in this rule to any magistrate may be further limited by the appointing authority; for example, the magistrate’s authority may be limited to issuing warrants after the return of

indictments, to receiving guilty pleas, etc. Although a warrant clerk is a type of magistrate, the position of warrant clerk does not carry the same responsibility or authority as the position of magistrate, and a warrant clerk is authorized only to issue warrants of arrest returnable to the district court.

Subdivision II lists the qualifications a person must meet to be eligible for appointment as a magistrate. As public officers, magistrates must be qualified electors of Alabama, cannot hold two offices of profit under the United States or State of Alabama, and shall not have been convicted of any disqualifying crime. Anyone authorized to appoint a person to the position of magistrate and anyone authorized to recommend a person for appointment to the position should, before making an appointment or recommendation, consult the general eligibility states contained in Ala. Code 1975, Title 36, Chapter 2.

Magistrates are a part of the judicial branch of government and must exercise independent judgment in the performance of their duties; therefore, and in accordance with decisions of the United States Supreme Court, any person appointed as a magistrate must also be neutral and detached from the law-enforcement function. No person affiliated with the prosecution or with a police organization or function, assigned to a police organization or function, or otherwise connected with law-enforcement activities should be considered eligible for appointment.

Subdivision III provides for written notice of appointment to the ADC when an appointment is made by the district court clerk. Notification of all appointments made by the ADC will be in writing and will be kept on file in the Administrative Office of Courts and will be locally filed in the office of the district court clerk or, where applicable, in the office of the municipal court clerk.

Subdivision IV requires all persons appointed as magistrates to take and file the oath of office prescribed for public officers by the Constitution of Alabama. District court clerks serving the district magistrates agency division who have already taken and filed the oath as clerk are exempt from these provisions. Explanation is given for the proper manner of filing the oath of office and the certificate of the administering officer in accordance with Ala. Code 1975, Title 36, Chapter 4, with a specific provision included to ensure that a magistrate's failure to file the oath as directed will not render any acts of such officer invalid. This comports with the general rule that any magistrate who enters into office without first taking the oath shall be deemed a de jure officer and all official acts performed by such officer are valid.

Note from the reporter of decisions: The order amending Rule 16, Rule 18, Rule 19, Rule 20, Appendix B to Rule 20, Rule 30, and Rule 31, effective November 9, 2006, is published in that volume of Alabama Reporter that contains Alabama cases from 944 So. 2d.

Note from the reporter of decisions: The order amending the Comment to Rule 18, effective June 22, 2007, is published in that volume of Alabama Reporter that contains Alabama cases from 957 So. 2d.

Note from the reporter of decisions: The order amending Rule 18, Appendix B to Rule 20, and Rule 42(E), effective December 14, 2007, is published in that volume of Alabama Reporter that contains Alabama cases from 972 So. 2d.