

ALABAMA RULES OF JUVENILE PROCEDURE

Rule 8.1.

Juvenile court magistrates.

(A) *Establishment of juvenile court magistrates.*

(1) There is hereby established a category of magistrate titled "juvenile court magistrate." A person serving as a juvenile court magistrate must be a full-time or part-time employee of the Unified Judicial System or a person working in the juvenile court without regard to whether his or her salary is paid from Unified Judicial System funds. A person nominated in writing by the presiding juvenile court judge and the clerk of the circuit court to be a juvenile court magistrate, absent good cause otherwise, shall be appointed by the Administrative Director of Courts to serve as juvenile court magistrate.

(2) Juvenile court magistrates shall be subject to the direction and supervision of the clerk of the circuit court if they are employees of that office or to the direction and supervision of the presiding juvenile court judge if they are employees of or persons working for the juvenile court.

(3) Unless already appointed to be a district court magistrate pursuant to Rule 18, Alabama Rules of Judicial Administration, a juvenile court magistrate's power to issue warrants of arrest against adults and to establish the initial bail amount shall be limited to criminal offenses within the jurisdiction of the juvenile court pursuant to Ala. Code 1975, § 12-15-116.

(4) Each juvenile court magistrate must, within 12 months of taking office, enroll in a magistrates' orientation and certification program approved by the Administrative Office of Courts for district court magistrates in Rule 18, Alabama Rules of Judicial Administration. The Administrative Director of Courts may waive the requirements of this subsection as to a juvenile court magistrate, either partially or completely, on his or her own initiative or upon written request from the clerk of the circuit court or from the presiding juvenile court judge. The Administrative Director of Courts shall establish criteria on which to base any such waivers.

(B) *Nominations and qualifications for appointment.*

(1) **Eligibility.** The position of juvenile court magistrate is an office of public trust. Any person appointed as a juvenile court magistrate must be a qualified elector of Alabama, cannot hold two offices of profit under the United States or the State of Alabama Constitutions, and shall not have been convicted of any disqualifying crime. In addition, a juvenile court magistrate shall be neutral and detached from the executive and legislative branches of government.

(2) **Nominations for Appointments.** All nominations for persons to be appointed juvenile court magistrates pursuant to the provisions of this rule shall be in writing.

(C) **Notice of appointment.** Each appointment made pursuant to this rule shall be in writing. The original appointment letter shall be filed in the office of the circuit court clerk, and a copy shall be maintained by the Administrative Office of Courts.

(D) **Oath of office.** Except when persons have already taken oaths of office as district court magistrates, all juvenile court magistrates 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 to by the person taking the oath and accompanied by the certificate of the officer administering the same, specifying the day, the month, and the year it was taken. For all juvenile 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 clerk of the circuit court. Failure to file an oath as required by this subsection shall not render invalid any acts of said magistrates.

[Adopted 7-14-2001, eff. 10-1-2011; Amended 5-1-2014, eff. 7-1-2014.]

Comment to Rule 8.1 Adopted Effective October 1, 2011

This rule establishes a new category of magistrate titled "juvenile court magistrate." The purpose is to create a separate office with limited authority to handle matters that are under the jurisdiction of the juvenile court.

This rule further provides that juvenile court magistrates shall be subject to the direction and supervision of the clerk of the circuit court if they are employees of or working for that office or to the direction and supervision of the presiding juvenile court judge if they are employees of the juvenile court. The purpose of this provision is to make the juvenile court magistrate responsible to the person in authority who appoints and terminates these employees.

This rule also provides for eligibility requirements, notices of appointment, and oaths of office for juvenile court magistrates. These provisions were patterned after similar provisions for district court magistrates in Rule 18, Alabama Rules of Judicial Administration, including the provision that a magistrate shall not have been convicted of a disqualifying crime. See § 36-2-1, Ala. Code 1975.

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, specifically *Shadwick v. City of Tampa*, 407 U.S. 345 (1972), any person appointed as a magistrate must 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. Additionally, unless otherwise authorized by law, no person affiliated with any other executive or legislative branch of government, including holding any elective or appointive offices or positions of trust, should be considered eligible for appointment.

Subsection (D) requires that all persons appointed as magistrates take and file the oath of office prescribed for public officers by the Constitution of Alabama except when those persons have already taken oaths of office as district court magistrates. 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 invalid any acts of that magistrate. This comports with the general rule that any magistrate who enters into office without first taking the oath shall be deemed a de facto officer and that all official acts performed by such an officer are valid.

Comment to Amendment to Rule 8.1 Effective July 1, 2014

Subsection (A)(1) of Rule 8.1 was amended to provide that full-time and part-time Unified Judicial System employees may be appointed juvenile court magistrates. In addition, subsection (B)(1) of Rule 8.1 was amended to delete the prohibition against serving in other capacities in order to leave that issue to be controlled by other law.

Note from the reporter of decisions: The order amending effective October 1, 2011, Rule 1, Rule 2, Rule 3, Rule 5, Rule 6, Rule 8, Rule 9, Rule 12, Rule 13, Rule 14, Rule 15, Rule 15.1, Rule 17, Rule 18, Rule 20, Rule 23, Rule 24, Rule 25, Rule 26, Rule 28, and Rule 31 and adopting effective October 1, 2011, Rule 8.1 and the Comment to Amendment to Rule 1 Effective October 1, 2011; the Comment to Amendment to Rule 2 Effective October 1, 2011; the Comment to Amendment to Rule 3 Effective October 1, 2011; the Comment to Amendment to Rule 5 Effective October 1, 2011; the Comment to Amendment to Rule 6 Effective October 1, 2011; the Comment to Amendment to Rule 8 Effective October 1, 2011; the Comment to Adoption of Rule 8.1 Effective October 1, 2011; the Comment to Amendment to Rule 9 Effective October 1, 2011; the Comment to Amendment to Rule 12 Effective October 1, 2011; the Comment to Amendment to Rule 13 Effective October 1, 2011; the Comment to Amendment to Rule 14 Effective October 1, 2011; the Comment to Amendment to Rule 15 Effective October 1, 2011; the Comment to Amendment to Rule 15.1 Effective October 1, 2011; the Comment to Amendment to Rule 17 Effective October 1, 2011; the Comment to Amendment to Rule 18 Effective October 1, 2011; the Comment to Amendment to Rule 20 Effective October 1, 2011; the Comment to Amendment to Rule 23 Effective October 1, 2011; the Comment to Amendment to Rule 24 Effective October 1, 2011; the

Comment to Amendment to Rule 25 Effective October 1, 2011; the Comment to Amendment to Rule 26 Effective October 1, 2011; the Comment to Amendment to Rule 28 Effective October 1, 2011; and the Comment to Amendment to Rule 31 Effective October 1, 2011, is published in that volume of *Alabama Reporter* that contains Alabama cases from ____ So. 3d.

Note from the reporter of decisions: The order amending Rule 1, Rule 2, Rule 3, Rule 5, Rule 5.1, Rule 6, Rule 8, Rule 8.1, Rule 12, Rule 13, Rule 14, Rule 15, Rule 18, Rule 20, Rule 24, Rule 26, Rule 28, and Rule 31 effective July 1, 2014, is published in that volume of *Alabama Reporter* that contains Alabama cases from ____ So. 3d.