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MAGISTRATES IN THE STATE OF ALABAMA;

A Handbook on the Powers and Duties of
Magistrates in the Municipal Courts of
Alabama
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Presented by:

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INTRODUCTION

Over the years, the Alabama Municipal Court Clerks and Magistrates Association, and the Administrative Office of Courts has focused on the subject of magistrates and their role in our Unified Judicial System. Agencies have spent considerable time and energies over the past several years attempting to build a strong contingency of knowledgeable, well trained, tactful, independent-thinking municipal and district court magistrates and to give them the tools with which to perform effectively. Products developed to assist magistrates in understanding the nature and extent of their responsibilities include the following:

- * Education sessions on duties and responsibilities of magistrates, neutrality and detachment from law enforcement, issuing arrest warrants, etc.
- * Indictment and Warrant manual
- * Forms, deposition, complaint, warrant, warrant log, warrant recall, etc.
- * Handbook for magistrates on warrant issuance
- * Training for law enforcement officers regarding the magistrate's role as well as information designed to improve arrest and charging procedures.

But, this training and support is never enough. Because we are dealing with a matter of constitutional significance, we must all be diligent and work together to help each other to understand the issuance of arrest warrants as a critical component of the initiation of criminal proceedings. We can grow in this regard together.

Magistrates are the first line of court services to many citizens. The quality of a magistrate's service has a direct positive or negative effect on the lives of the citizens of Alabama. In fact, a poorly functioning magistrate can have a devastating effect on a person's life and future.

In preparing this handbook, I read many court cases containing questions regarding the sufficiency of complaints, and regarding probable cause (or reasonable cause), and policemen's ability to arrest without a warrant, having themselves determined probable cause to do so. I have read about "bare bones" affidavits, good faith exceptions to arrest bases on defective warrants, warrants based solely on conclusions. And I have come to the conclusion that all of the structure, form and procedures for an excellent system. But...I've also come to the conclusion, and the literature clearly shows that the state and federal "high" courts are much more interested in (1) the information available to and communicated to magistrates during the probable cause

determination than on the specific information on the complaint, and (2) how magistrates process the information received than how the form is completed.

In essence, the courts are more interested in whether magistrates are making intelligent, knowledgeable, independent determinations regarding whether probable cause exists to issue warrants. Courts are hesitant to second guess a magistrate on whether a warrant should or should not be issued. There are too many things the magistrate has to consider (such as whether the magistrate considers the complainant to be a credible witness). I did not find instances where the magistrate's decision was reversed where evidence shows that sufficient information was presented to allow a probable cause determination. It appears that the courts on later cases are primarily concerned with the sufficiency of facts communicated to the magistrate prior to the decision to issue a warrant.

The focus is not in ensuring that no innocent person will ever be arrested. Rather, the constitutional requirement of probable cause for arrest serves the purpose of protecting the citizenry from unreasonable intrusion by the government.

There are three branches of each level of government. Each is equal in importance to the others.. Each is subject to checks and balances by the other branches. All three branches operate within a legal framework, called the Constitution, which may authorize or prohibit certain activity.

Legislative Branch:	Makes our laws
Executive Branch:	Enforces our laws
Judicial Branch:	Interprets the laws, settles disputes

MAGISTRATES IN ALABAMA

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DUTIES OF CLERKS AND MAGISTRATES FOUNDED IN THE BILL OF RIGHTS

Early Americans fought and won war to secure their independence from a government they deemed oppressive. While forming their new government and drafting a Constitution, they tried to ensure that future generations would be protected from the abuses they had suffered under British rule.

Not satisfied that the original Constitution contained sufficient safeguards for the people, they adopted ten amendments, which became known as the Bill of Rights.

As magistrates, your power and authority derive from the Fourth and Sixth Amendments in the Bill of Rights. When you issue a warrant of arrest, you are engaging in an activity that the founding fathers of our nation viewed as extremely important. The procedures that are recommended in this handbook - the items suggested to be included in a complaint or arrest warrant - have their bases in the requirements set forth by the Fourth and Sixth Amendments.

Amendment Number Four in the Bill of Rights states, "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to

be seized."

Breaking this amendment down, we see that it speaks first of the **rights of the people**. That was uppermost in the minds of our Founding Fathers. This was their way of protecting themselves and future generations from wrongful acts by the government. It speaks of **probable cause** and requires an **oath** or affirmation. It states that the place to be searched or persons or things to be seized must be **particularly** described.

Article 1, Section 5 of our State Constitution offers similar protection against unreasonable arrests, searches and seizures and guarantees its citizens this right in almost identical terms. Our Constitution provides:

"That the people shall be secure in their persons, houses, papers and possessions from unreasonable seizure or searches, and that no warrants shall issue to search any place or to seize any person or thing without probable cause, supported by oath or affirmation."

Although these sections are often referred to as search and seizure provisions of the federal and state Constitutions, they also protect individuals from illegal seizures of their persons - that is to say, from arrests. The express terminology of the 4th Amendment and the historical context of its adoption lead to this conclusion.

In the 1959 case of Henry v. U. S., the Supreme Court dispelled any uncertainty that might previously have existed as to the status of illegal arrests under the 4th Amendment, holding:

"It is the command of the 4th Amendment that no warrants either for searches or arrests shall issue except upon probable cause."

Until 1963, only federal arrests, searches and seizures were governed by the standards embodied in the 4th Amendment, while state procedures were judged according to the more flexible standard of the due process clause of the 14th Amendment. This practice changed in 1963, however, when the Supreme Court held, in the case of Ker v. California, that arrests by local officers must comply with the same constitutional

standards which apply to the federal government. In order for an arrest to be valid today, you must comply with the Alabama Constitution and State statutes, as well as the constitutional standards of the 4th Amendment of the United States Constitution as well.

Amendment Number Six states, in part, that the accused in all criminal prosecutions shall enjoy the right to "be informed of the nature and cause of the accusation and to be confronted with the witnesses against him."

This mandate and other portions of the Sixth Amendment dictate some of the things magistrates must do. Many of the items that must be included on the complaint and warrant of arrest forms are there because of the requirements of the Fourth and Sixth Amendments.

ALABAMA CONSTITUTION, STATUTES, SUPREME COURT RULES PROVIDE FOR CLERKS AND MAGISTRATES AUTHORITY

Section 6.01(b) of Amendment No. 328 to the State Constitution provides for the creation of judicial officers with the authority to issue warrants. In effect, this constitutional provision mandated legislation granting these officers the powers and responsibilities necessary to carry out this function.

The state Legislature fulfilled this mandate by enacting provisions now codified at Sections 12-14-50 through 12-14-52 and Section 12-17-251 of the Alabama Code. These sections provide for the creation of two separate magistrates' agencies: A District Court Magistrate's Agency and a Municipal Court Magistrate's Agency.

Section 12-14-51(b), Code of Alabama 1975, provides that the Supreme Court of Alabama may provide for the appointment of magistrates by class or position. The Alabama Supreme Court has exercised this power by adopting Rule 18, Alabama Rules of Judicial Administration. It should be noted that, except as otherwise provided in Rule 18, ARJA, magistrates serve at the pleasure of the appointing authority.

WHO MAY SERVE IN THE MUNICIPAL COURT?

All clerks of municipal courts are authorized to serve as municipal court

magistrates. The Administrative Director of Courts may designate persons within the clerk's office as magistrates upon the written recommendation of the clerk. The ADC may appoint any eligible person to serve as a municipal court magistrate upon the written recommendation of the municipal judge or judges.

With the exception of the clerk of the municipal court, the appointment of all municipal court magistrates shall be made in writing by the Administrative Director of Courts in Montgomery. A copy of the letter of appointment shall be filed with the Administrative Office of Courts and in the office of the clerk of the municipal court wherein the magistrate is serving.

Inquiries or nominations should be directed to the Administrative Director of Courts, 300 Dexter Avenue, Montgomery, Alabama 36104, Attention: Municipal Magistrate Appointments. The telephone number is 1-800-392-8077.

WHO MAY SERVE IN THE DISTRICT COURT? ^Rule 18 I.(A)(1), ARJA

All clerks of the district courts shall serve as magistrates. In the great majority of counties, the Circuit Clerk also serves as the Clerk of the District Court. In counties where the Clerk of the District Court is a different person, that person

serves as a magistrate, instead of the Circuit Clerk.

The Clerk of the District Court may appoint persons within the clerk's office to serve as a magistrates or warrant clerks. Such appointments must be made in writing. Additionally, the clerk, along with the judge or judges may recommend persons for appointment by the Administrative Director of Courts as district court magistrates.

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 also serve as district court magistrates.

WARRANT CLERKS (Rule 18-1(A)(1), ARJA

Within the District Court Magistrates' Agency, provision has been made for a class of magistrates called warrant clerks whose powers are limited to issuance of arrest warrants returnable to the appropriate district court. See Section 12-17-251 of the Code and Rule 18-1(A)(1)(d) and (2)(a) of the Alabama Rules of Judicial Administration.

The clerk of the district court may appoint persons within the clerk's office to serve as warrant clerks. Warrant clerks may also be appointed by the Administrative Director of Courts upon the written recommendations of the district court clerk and district judge or judges.

The State Supreme Court has, by rule,

provided that the city clerk of any municipality with a population of 1,000 or more may be appointed as a warrant clerk by the Administrative Director of Courts. This does not appear to require a recommendation by the judge or court clerk. It should be noted that all appointments must be made by the person's name instead of by the title of city clerk.

This, in effect, provided that a magistrate may serve both the district and municipal court if appointed to one position without compensation. (See Opinion No. 27 of the Clerk of the Alabama Supreme Court, 386 So. 2d 210 (Ala. 1980.)) A person serving in both offices simultaneously is answerable to the district court judge and clerk when taking complaints for violations of state law, and to the municipal court judge and clerk when taking complaints for violations of municipal ordinances.

Warrants issued by warrant clerks for violations of state law or, where a municipality has abolished its court, for municipal ordinances, and are returnable only to State courts. Warrant clerks are not authorized for municipal courts.

AUTHORITY TO ISSUE SEARCH WARRANTS

Only those magistrates and warrant clerks who are licensed to practice law in this state are authorized to issue search warrants. Section 12-17-251(c)(1); Riner v. State, 394 So.2d 69 (Ala.Crim.App.) cert. denied, 394 So.2d 72 (Ala.1980).

ELIGIBILITY TO SERVE

Rule 18II(A) provides that the positions of magistrate and warrant clerk are **offices of public trust**, and any person appointed as magistrate or warrant clerk:

1. Must meet the general requirements established by law for public officers (General eligibility statutes of public officers are contained in Title 36, Chapter 2 of the Code.), and

2. Shall be neutral and detached from all law enforcement activities.

36-2-1. Persons not eligible to hold state office; holding of state and federal offices of profit or two state offices of profit.

(a) The following persons shall be ineligible to and disqualified from holding office under the authority of this state:

(1) Those who are not qualified electors, except as otherwise provided;

Since only residents are qualified electors of the state, a non-resident is not qualified to be appointed as a magistrate.

An alien by birth, who has not been naturalized nor declared his intention to become a citizen of the United States, is not a qualified elector and is not eligible to the office of sheriff. Scott v. Strobach, 49 Ala. 477 (1873).

(2) Those who have not been inhabitants of the state, county, district or circuit for the period required by the Constitution and laws of the state;

(3) Those who shall have been convicted of treason, embezzlement of public funds, malfeasance in office, larceny, bribery or any other crime punishable by imprisonment in the state of federal penitentiary and those who are idiots or insane;

Magistrates shall not have been convicted of any disqualifying crime. General eligibility statutes and constitutional provisions should be consulted prior to recommending or appointing any person to the position of magistrate, including appointments of court clerks.

A pardon that expressly restores civil and political rights to an individual removes all disabilities that accompany a conviction, making the person eligible to hold office. State v. Burr, 580 So.2d 1340 (Ala.1991).

(4) Those against whom there is a judgment unpaid for any moneys received by them in any official capacity due to the United States, this state or any county or municipality thereof; and

(5) Soldiers, seamen or marines in the regular army or navy of the United States.

(b) No person holding an office of profit under the United States shall, during his continuance in such office, hold any office of profit under this state, nor shall any person hold two offices of profit at one and the same time under this state, except constables, notaries public and commissioners of deeds.

Magistrates cannot hold two offices of profit. A magistrate may, however, serve both the district and municipal court if appointed to one position without compensation. (See Opinion No. 27 of the Clerk of the Alabama Supreme Court, 386 So.2d 210 (Ala.1980). But an appointment to one office does not automatically make one

eligible to serve in the other office. There must be two separate appointments.

One may become "ineligible to or disqualified from holding office under the authority of this state," by virtue of this section, during the term of office, even though duly elected (or appointed) and qualified at the time of assuming office. State ex rel. Graddick v. Rampey, 407 So.2d 823 (Ala.1981).

If a person who occupies one office under this state assumes another office of profit while still serving in the first office, that person is deemed to automatically vacate the first office upon assumption of the second office.

MAGISTRATES REQUIRED TO BE NEUTRAL AND DETACHED FROM LAW ENFORCEMENT

A basic United States and Alabama constitutional safeguard is that a person accused of a crime has the right to a determination by an impartial decision maker. To satisfy the constitutional guarantee of due process, the person judging the accused - which includes judges and magistrates - must maintain a balance between the interests of the state (municipality) and the accused. Any conflict, whether financial or otherwise, which causes the decision maker to be other than totally impartial violates the accused person's right to due process. This includes the requirements that the court official must be neutral and detached from law enforcement and law enforcement activities.

Pursuant to Rule 18, ARJA and Section 12-5-10(1), requests for appointment as magistrate must be submitted in writing to the Administrative Director of Courts. Prior to submitting nominations for appointment as magistrate, each official making the recommendations must make sure the nominee is "neutral and detached" from the law enforcement function. If the nominee later becomes ineligible to serve as magistrate, the Administrative Director of Courts must be advised of this fact or matter. Rule 18-II, ARJA. The MAGISTRATE/WARRANT CLERK INFORMATION FORM, Form C-72, has been developed for this purpose. A copy of this form should be filed in the court clerk's office for future reference.

When a magistrate is appointed by the

Administrative Director of Courts, a letter of appointment is forwarded to the recommending authority. Copies of this letter should be maintained by the court clerk and the magistrate.

The courts have consistently ruled that you, as magistrate, are a part of the judicial branch of government and are required to exercise your independent judgment in the execution of your duties.

The United States Supreme Court has determined that persons issuing warrants must be "neutral and detached" from the law enforcement function. As early as 1948, the U.S. Supreme Court held that persons issuing warrants must be sufficiently removed from law enforcement activities so as to ensure that warrants meet Constitutional standards. In that 1948 decision, the Court held that a warrant may not be issued by a policeman or government law enforcement agent. Johnson v. United States, 333 U.S. 10, 14, 68 S.Ct. 367, 369 (1948).

The Court ruled again in the case of Giordenello v. United States, 357 U.S. 480, 78 S.Ct. 1245 (1958), that a finding of probable cause must be made by someone other than a law enforcement officer engaged "in the often competitive enterprise of ferreting out crime".

"The arrest warrant procedure serves to ensure that the deliberate, impartial judgment of a judicial officer will be interposed between the citizen and the police to assess the weight and

credibility of the information which the complaining officer adduces as probable cause." Wong Sun v. United States, 371 U.S. 471, 481, 83 S.Ct. 407, 414 (1963).

The question arose again in 1972 when arrest warrants issued by a Tampa, Florida, municipal court clerk came under attack. The Court held that magistrates issuing arrest warrants must be "severed from and disengaged from activities of law enforcement in order to be neutral and detached." In establishing a standard for determining neutrality, the court stated that **"whatever else neutrality and detachment might entail, it is clear that it requires severance and disengagement from law enforcement."**

Shadwick v. City of Tampa, 407 U.S. 345, 92 S.Ct. 2119 (1972).

In finding the Tampa magistrate competent to issue warrants, the Court looked to:

1. The possibility of affiliation with prosecution and police;
2. Assignment to police; and
3. Connection with law enforcement activities.

These appear to be the tests of "neutrality and detachment." They also lend themselves to inquiries regarding

employment, duties, source of compensation, and administrative and supervisory control of candidates for the position of magistrate.

The Court rejected the argument that sometimes the only persons available to issue arrest warrants and perform the other duties of the magistrates are in some way related to law enforcement agencies. In a case in which the warrant in question was issued by the New Hampshire Attorney General who was authorized as a justice of the peace to issue warrants, the Court held that the New Hampshire procedure failed to meet the tests of neutrality and detachment and violated the Fourth and Fourteenth Amendments. Coolidge v. New Hampshire, 91 S.Ct. 2022 (1971).

In an opinion dated August 10, 1979, the Attorney General stated that "the District Attorney and the Assistant District Attorney (Prosecutor) may assist the warrant magistrate in drafting, interviewing and preparation of the warrant so long as that assistance does not impair the detached and independent nature of the magistrate. The magistrate, himself, must hear evidence of the probable cause and must make an independent judgment relating to the issuance of the warrant."

State of Alabama Unified Judicial System Form C-72 12/92	MAGISTRATE / WARRANT CLERK APPOINTMENT INFORMATION	Date of Request: _____
I. County of _____ (City) (Town) of _____		
II. Appointment is requested for: <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <div style="width: 45%;"> (a) Municipal Court <input type="checkbox"/> Magistrate </div> <div style="width: 45%;"> (b) District Court <input type="checkbox"/> Magistrate <input type="checkbox"/> Warrant Clerk <input type="checkbox"/> Juvenile Court Intake Office <small>(both circuit and district juvenile court)</small> </div> </div>		
III. Please <input type="checkbox"/> APPOINT the following; or <input type="checkbox"/> RESCIND appointment for the following: Name _____ Home Address _____ Home Phone _____ Present Employer _____ Present Job Title and Duties _____ Office Phone _____		
I do attest to the fact that the above-requested appointee is neutral and detached from law enforcement as mandated by decisions of the U.S. Supreme Court, and meets the general requirements established by law for public officers.		
IV. Officers of the court: <div style="margin-top: 10px;"> Judge _____ Signature _____ Office Address _____ _____ Office Phone _____ </div> <div style="margin-top: 10px;"> Judge _____ Signature _____ Office Address _____ _____ Office Phone _____ </div> <div style="margin-top: 10px;"> Judge _____ Signature _____ Office Address _____ _____ Office Phone _____ </div> <div style="margin-top: 10px;"> Court Clerk _____ Signature _____ Office Address _____ _____ Office Phone _____ </div>		
<div style="display: flex; justify-content: space-between;"> <div> Please return completed form to : </div> <div style="text-align: center;"> Administrative Office of Courts Court Assistance Division 817 South Court Street Montgomery, AL 36130-0101 </div> <div> (WATS Phone 1-800-392-8077) </div> </div>		

THE MAGISTRATES AGENCY DIVISIONS

The State Legislature fulfilled the mandate of Section 6.01 of Amendment 328 by enacting provisions in Act 1205, 1975, now codified at Sections 12-14-50 through 12-14-52 and Sections 12-17-251 through 12-17-253, Code of Alabama 1975. These sections provide for the creation of two separate magistrates agency divisions: A District Court Magistrates Agency Division and a Municipal Court Magistrates Agency Division. The composition, manner of appointment, and authority of magistrates vary according to division.

Rule 18.I, ARJA, provides: "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".

Rule 18.III provides "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 the administrative office of courts 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 wherein the magistrate is serving.

MUNICIPAL COURT MAGISTRATES AGENCY DIVISION

Section 12-14-50, Code of Alabama 1975, provides as follows:

"The municipal court may have under its supervision a municipal court 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.

"The personnel designated by the judge or judges of the municipal court for the accounting of uniform traffic tickets or complaints and magistrates shall be considered as officials of such administrative agency.

"Such officials shall be vested with judicial power reasonably incident to the accomplishment of the purposes and responsibilities of the administrative agency."

This indicates that magistrates are cloaked with judicial immunity if acting within the powers delegated by statute or rule. Such immunity appears not to be available if the magistrate is acting outside the scope of power and authority granted or is acting out of malice. See discussion on Judicial Immunity later in this handbook.

Section 12-14-52 provides "The supreme court shall provide rules of administration for such administrative agency, including the bonding of all officials who will be handling money." Municipal magistrates must be bonded if they handle money or exercise authority over city property (Section 11-43-13). Such bond amount should be set by the council, with surety approved by the mayor. District court magistrates are covered under a blanket bond executed by the Administrative Office of Courts.

WHO MAY SERVE

Section 12-14-51(B) of the Code provides that the Supreme Court of Alabama may provide for the appointment of magistrates by class or position. The Alabama Supreme Court has exercised this power by adopting Rule 18, ARJA.

Rule 18(B)(1) provides that the municipal court magistrates agency division shall be composed of magistrates selected as follows:

1. All clerks of municipal courts;
2. Any person within the office of the municipal court clerk so designated by the Administrative Director of Courts upon written recommendation of the clerk

of the municipal court;

3. Any person appointed by the Administrative Director of Courts upon the written recommendation of the municipal judge or judges.

NOTE: A court clerk cannot be given the designation of magistrate under the Civil Service Act, but once appointed, the court clerk automatically becomes a magistrate under the Rules of Judicial Administration. Once a municipal court clerk is appointed, pursuant to Rule 18 (II)(B)(1)(a), ARJA, that clerk automatically becomes a magistrate. A CHIEF MAGISTRATE would not be authorized to perform the duties of a court clerk. Attorney General Opinion No. 87-215, dated 6-17-87.

NOTE: The mayor may not occupy the position of municipal court magistrate. [The same is true for city council persons, who serve in a separate branch of municipal government.] Such an appointment would violate the constitutional division between the executive [or legislative] and judicial branch at the municipal level. There is no prohibition against the appointment of firemen. There is a prohibition against firemen and other municipal employees receiving additional compensation from the municipality for serving as a magistrate.... Attorney General Opinion to Allen L. Tapley, dated May 7, 1985.

NOTE:

There are no (statutory) laws specifically prohibiting the appointment of the wife of the assistant chief of police as the Chief Clerk/Magistrate of the Municipal Court. There may be ethical or constitutional issues. May also be

questions re: neutrality and detachment in warrant issuance. Attorney General Opinion No. 85-164, dated 1-8-85. Although there are no general laws prohibiting the appointment of the wife of the chief of police as the municipal court clerk and magistrate, a magistrate must be neutral and detached from all law enforcement activities. Attorney General Opinion, dated 4-27-90. There exists a potentially severe problem regarding neutrality and actual detachment of such a magistrate who must make probable cause determinations. Several municipalities have local civil service statutes that prescribe conditions under which relatives may not be employed, and one should be sure that a specific municipality has no such statute.

DISTRICT COURT MAGISTRATES AGENCY DIVISION

Section 12-17-251 provides:

(a) The magistrates shall be considered the chief officers of such administrative agency, subject to the administrative directions of the clerk of the district court.

(b) The supreme court may, by rule, prescribe procedures for the appointment of magistrates by class or position. In addition thereto, the supreme court may provide for the appointment of other magistrates by the administrative director of courts, upon recommendation and nomination by the judge of judges and the clerk of the district court under whom such magistrates are to serve.

(c) The powers of a magistrate shall be limited to:

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

(2) Granting of bail in minor misdemeanor prosecutions;

(3) Receiving of pleas of guilty in minor misdemeanors where a schedule of fines has been prescribed by rule; and

(4) Such other authority as may be granted by law.

Section 12-127-252 provides that the supreme court shall provide rules of administration for such administrative agency, including the bonding of all officials who will be handling money.

Section 12-17-253. Election by inferior court judges whose positions abolished by Constitution to become magistrates for duration of unexpired terms as judges; salaries of such judges.

In the event that there exists within the state of Alabama a judge of a court inferior to the circuit court in any county, municipal judges excluded, who is not qualified under the provisions of amendment 328 to the Constitution of Alabama to continue to be a judge and whose judgeship is abolished by said amendment 328 prior to the expiration of his term, then said judge may elect to automatically become a magistrate under this title for the duration of his unexpired term as a judge, provided that such election shall be made in writing prior to January 1, 1977, and filed with the secretary of state.

The salary of such magistrate, to be paid by the state, shall be equal to the

salary such judge earned as such inferior court judge on September 1, 1975.

WHO MAY SERVE

Rule 18.1.(A)(1) provides that 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 judges 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 (apparently without recommendation or nomination). **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.**

THE OFFICE OF MAGISTRATE

PUBLIC OFFICE

A public office is defined as the right, authority, and duty created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the **sovereign functions of government** for the benefit of the public.

Essential characteristics of "public office" are

- (1) authority conferred by law,
- (2) fixed tenure of office, and
- (3) power to exercise some portion of sovereign functions of government.

A key element of the "test" (of a public office) is that the officer is carrying out a sovereign function (of the State). Spring v. Constantino, 168 Conn. 563, 362 a.2d 871, 875. See also Alexander v. State ex rel. Carver, 274 Ala.441, 150 So.2d 204 (1963).

Essential elements to establish a public position as a "public office" are:

- (1) the position must be created by constitution, legislature, or through authority conferred by legislature,
- (2) a portion of the sovereign power of government must be delegated to the position (emphasis provided),
- (3) the duties and powers must be defined, directly or impliedly, by legislature or through legislative authority,

(4) the duties must be performed independently without control or superior powers other than law, and

(5) the position must have some permanency and continuity. State v. Taylor, 260 Iowa 634, 144 N.W.2d 289, 292.

SOVEREIGN POWER

That power in a state to which none other is superior or equal, and which includes all the specific powers necessary to accomplish the legitimate ends and purposes of government.

JUDICIAL FUNCTION

"Judicial function" relates to the capacity to act in the specific way which appertains to the judicial power as one of the powers of government.

JUDICIAL OFFICE

A **judicial office** is one which relates to the administration of justice; and which should be exercised by persons of sufficient skill and experience in the duties which appertain to them. A **judicial officer**, in the strictly legal sense, applies only to an officer of the court who determines causes between parties or renders decisions in a judicial capacity.

OFFICE OF PROFIT

The position of the magistrate is an "office" of the State, within the meaning of Rule 18 of the Alabama

Rules of Judicial Administration. It has been determined, however, that the positions of district and municipal court magistrates and warrant clerks, as provided in this Rule, are not offices of profit under this state, when persons in those positions are appointed by the Administrative Director of Courts without compensation. Opinion of the Clerk (No. 27), 386 So.2d 210 (Ala.1980). Office of profit means a public office. Alexander v. State ex rel.Carver, 274 Ala. 441, 150 So.2d 204 (1963).

An office of profit has the following elements:

(1) the holder must exercise some portion of the sovereign power of the state,

(2) there must be a fixed term (tenure), and

(3) there must be fixed compensation for the position. Opinion to Honorable Larry Bennich, Chairman, Morgan County Commission, dated June 11, 1992, A.G. No. 92-00308.

Magistrates must be compensated on a basis that does not relate to the number of warrants issued or the type of action taken in any case coming before him or her. Magistrate compensation may not be established in any manner that provides an incentive to issue warrants or reduction in the complete freedom to make independent decisions without fear of personal or financial losses.

An expense allowance is not compensation, but is a reimbursement to an individual for charges or

expenses incurred in the performance of his duties. Hart v. deGraffenried, 388 So. 2d 1196 (Ala. 1980). There is no statutory provision which precludes the payment of an expense. Attorney General Opinion No. 87-173, dated 5-13-87. Part-time municipal magistrates may be paid on a per-call basis. Attorney General opinion No. 89-330, dated 6-22-89.

[A] Councilman can ...serve as district court warrant magistrate and receive reimbursement for expenses for his services as magistrate. (Councilman ~~was~~ also receiving compensation for serving as council member.) The Constitution ...prohibits ...holding more than one office of profit. Office of Town Councilman is an office of profit. Smith v State ex rel. Mayor and Town Council of Citronelle, 276 So 2d 473 (1964). (However), positions of district and municipal magistrates and warrant clerk are not offices of profit when appointed by the ADC and are without compensation. If a councilman receives compensation for services as warrant magistrate he cannot serve in both positions. Attorney General Opinion No. 85-491, dated 9-3-85.

The issue of whether a magistrate or warrant clerk is receiving compensation or an expense allowance should be thoroughly considered by the chief magistrate (clerk) of each court, since the issue of a magistrate's eligibility to serve could be raised at trial. Care should be taken to ensure that persons who serve both the district and municipal court are not receiving compensation separately for service in another office of public trust. It should not be assumed,

for instance, that payment classified as reimbursement of expenses will go unchallenged.

OATH OF OFFICE

All magistrates and warrant clerks are required to take the Oath of Office (see Form MC-14A, Rev. 3/88) before entering upon the duties of that office. Article XVI, Section 279, Constitution of Alabama, 1901, and Rule 18 (IV), ARJA. The oath must be written out and subscribed by the person taking the oath and accompanied by the certificate of the administering officer, specifying the day and year it was taken.

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. This does not, however, require the clerk of the district court to take and file a separate oath. Rule 18.IV.

The oath and certificate for each municipal magistrate must be filed where other oaths of municipal officials are filed and a copy should also be forwarded to the Administrative Office of Courts. If a municipal court's jurisdiction is wholly within the boundaries of one county, the oath must be filed with the City Clerk and Probate Court. If the jurisdiction is in more than one county, a copy must also be filed with the Secretary of State.

Failure to file an oath shall not render any acts of the magistrate invalid. Rule 18.IV, ARJA. But, see Rule 34, ARJA, which provides "for a willful noncompliance with and material or

substantive requirement of these rules or Act 1205, Acts of Alabama, 1975 Regular Session, any official, officer or employee of the unified judicial system subject to these rules may be held in contempt of court by the supreme court, or by any court of competent jurisdiction, after reasonable notice of such noncompliance."

WHO MAY ADMINISTER THE OATH?

A review of the statutes revealed that the following officers are authorized to administer an oath of office to a judge or magistrate: Judges, 12-1-7(5); probate judges, 12-13-40(1); municipal judges, 12-14-31(a); clerks of the circuit, 12-17-93(1); district court clerks, 12-17-101(a); the chief justice and associate justices, 12-2-3; the clerk of the supreme court, 12-2-97(1); clerks of the courts of appeals, 12-3-26; notaries public, 36-20-5(1) and Attorney General Opinion, dated 5-10-82 providing that a notary public is empowered to administer the oath of office unless otherwise provided by law; the city clerk, if authorized to administer oaths by ordinance or resolution, 11-43-104; and official circuit court reporters, 12-17-270. The mayor may administer oaths if designated to do so by the council. Attorney General Opinion No. 88-397, dated 8-1-88.

REMOVAL FROM OFFICE

A magistrate does not serve a specific term of office, but continues to serve until the appointment is rescinded or is otherwise terminated. Termination of a magistrate's authority depends on the manner in which the appointment was made.

If a magistrate is serving pursuant to Rule 18.1(A)(1)(a), ARJA, after having been elected as clerk of the district court, or pursuant to Rule 18.1(B)(1)(a), ARJA, as a result of an appointment by the municipal governing body to the position of clerk of the municipal court, the authority to serve as magistrate ends upon termination of service as clerk.

If a person was appointed as magistrate by the Administrative Director of Courts, the appointment must be rescinded by the Administrative Director upon request by the judge(s) or clerk of the court, as appropriate. The request must be made using the **Magistrate/Warrant Clerk Appointment Information** form (form C-72). In such cases, if the magistrate works in the court clerk's office, the request may be made by the clerk; otherwise, it must be made by the judge.

If a person in the district court clerk's office was appointed by the clerk, the appointment must be rescinded by the clerk. The status of the magistrate's appointment does not depend on whether the original appointing clerk or ADC remains in or leaves the office. The appointment remains effective until whomever occupies the office rescinds the appointment.

CAUTION: If a magistrate becomes ineligible to hold office, it should not be assumed that the magistrate, or municipality, is protected from civil or other liability simply because the magistrate's appointment has not been rescinded. An appointment by the Administrative Director of Courts cannot supersede the eligibility requirements of the Constitution, statutes or Supreme Court Rule 18, ARJA.

**OATH OF OFFICE
FOR MUNICIPAL COURT MAGISTRATE**

Date Filed: _____

I, _____, solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States, and the Constitution of the State of Alabama, so long as I continue a citizen thereof; and that I will faithfully and honestly discharge the duties of the office of Magistrate upon which I am about to enter, to the best of my ability. So help me God.

Signature

Court Address

Telephone

CERTIFICATE OF ADMINISTERING OFFICER

The above Oath of Office was administered by me to _____, the newly appointed Municipal Court Magistrate for the _____ Municipal Court, on _____, 19____, in compliance with Article XVI, Section 279, *Constitution of Alabama 1901*.

Signature of Person Administering Oath

Title

Please Check appropriate box(es):

- ☐ Replaces _____
☐ New Position
☐ Also serves as Clerk of the Court

Retain copy and file original with :

The Judge of Probate, where municipal jurisdiction is within one county; otherwise, with the Secretary of State, State of Alabama, Montgomery, AL 36130-7701.*

*§36-4-2, *Code of Alabama 1975* - Duties not limited to one county

§36-4-4, *Code of Alabama 1975* - Duties of official limited to one county

State of Alabama Unified Judicial System Form C-71 3/88	OATH OF OFFICE FOR DISTRICT COURT MAGISTRATES OR WARRANT CLERKS	Date Filed in Office of Judge of Probate:
---	--	--

I, _____ do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States and the Constitution of the State of Alabama, so long as I continue a citizen thereof, and that I will faithfully and honestly discharge the duties of the office of Magistrate upon which I am about to enter, to the best of my ability. So help me God.

Signature

Address

Telephone

CERTIFICATE OF OFFICER ADMINISTERING OATH

The above oath was administered by me to _____,
the newly appointed District Court Magistrate/Warrant Clerk for the District Court
of _____ County on _____, 19 ____
in compliance with Article XVI, Section 279, Constitution of Alabama 1901.

Signature of Person Administering Oath

Title

Retain original and file with the Office of Judge of Probate

State of Alabama Unified Judicial System Form C-73 3/88	DISTRICT COURT MAGISTRATE/WARRANT CLERK APPOINTMENT*	
--	---	--

Date of Appointment

Date Oath Administered

Date Oath Filed With Probate Judge

IN THE DISTRICT COURT OF _____ COUNTY, ALABAMA

I hereby appoint _____ as
 District Court ☐ Magistrate ☐ Warrant Clerk to serve and perform the duties of such office, under my supervision.

Information on Appointee

Name _____

Home Address _____

Home Phone _____

Present Job Title & Duties _____

I do attest to the fact that the above-requested appointee is neutral and detached from law enforcement as mandated by decisions of the U. S. Supreme Court.

Court Clerk

Phone

Please return completed form to :

**Administrative Office of Courts
 Court Assistance Division
 817 South Court Street
 Montgomery, AL 36130-0101**

(WATS Phone 1-800-392-8077)

***Only for use to appoint individuals currently employed within the district court clerk's office to serve as District Court Magistrate or Warrant Clerk.**

POWERS AND DUTIES OF MAGISTRATES

Certain powers and duties of magistrates are found in the Alabama Rules of Criminal Procedure. These include **determining probable cause** to initiate a criminal proceeding where a person has been arrested without a warrant (Rule 4.3(a)(iii)); **issuing subpoenas** for examining any necessary witnesses and issuing writs of attachments for defaulting witnesses (Rule 2.4); **issuing summonses to appear** in lieu of arrest warrants for defendants (Rule 3.1); **releasing arrested defendants from obligation to appear** in court where probable cause is not found (Rule 4.3(a)(iii)); **conducting initial appearance hearings** (including bond hearings) and **determining conditions of release** where defendants are not otherwise released (Rule 4.4).

Act 93-325, the Family Violence Protection Order Enforcement Act, which is codified at Sections 30-5A-1 through 30-5A-7, Code of Alabama 1975, includes magistrates in the definition of "judge" in the recognition of certain protective or restraining orders related to family violence cases. The Act recognizes duly appointed magistrates' authority to issue certain orders, pursuant to the provisions of the Act, during the process of conducting initial appearances.

Municipal Courts

Section 12-14-51 provides that the power of municipal court magistrates shall be

limited to:

1. Issuance of arrest warrants; (**NOTE: Arrest warrants issued by municipal court magistrates are returnable only to the municipal court.**)
2. Granting of bail in minor misdemeanors;
3. Receiving guilty pleas in minor misdemeanors where a schedule of fines has been prescribed by rule;
4. Accountability to the municipal court for all uniform traffic tickets and complaints, moneys received and records of offenses; and
5. Such other authority as may be granted by law.

Rule 181(B)(2), Alabama Rules of Judicial Administration, further defined the authority of municipal magistrates subject to the administrative direction of the clerk of the municipal court. As provided by the rule, 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 in municipal ordinance prosecutions;
- (c) Approving surety bonds and receiving cash bail in municipal ordinance prosecutions;
- (d) Releasing defendants charged with municipal ordinance violations on their personal recognizance;
- (e) Receiving pleas of guilty in

municipal ordinance cases where a schedule of fines has been prescribed pursuant to Rule 20; and

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

By rule, the Supreme Court has prescribed a fine schedule for certain traffic infractions with the provision that a municipality may, by ordinance, expand this schedule to include other municipal ordinance violations. Rule 20(C), ARJA.

A municipal court magistrate has authority to authenticate a city ordinance, because, pursuant to Section 12-14-50, Code of Alabama 1975, municipal magistrates are vested with judicial power to accomplish the municipal court's responsibilities, pursuant to Section 12-14-51(a), they are considered "the chief officers of the municipal court," and, given their powers and duties according to RULE 18.I.(B)(2), ARJA, "it follows that their responsibilities and authority includes authorization of the very documents through which a citizen is being charged." Ex parte City of Dothan (Re: Kimberly Striplin v. City of Dothan), [Ms.1910331, July 10, *** (GET CITE)***

District Courts

Rule 18I(A)(2), Alabama Rules of Judicial Administration, further defined the authority of district court magistrates

subject to the administrative direction of the clerk of the district court. As provided by the rule, the powers of a district court magistrate, other than a warrant issuing magistrate [known as warrant clerks] whose powers are limited to the issuance of arrest warrants, 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 arrest 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.

District court magistrates are not authorized to accept payment for municipal parking tickets regardless of whether a municipality has abolished its court. This authorization remains with the municipality.

SUPERVISION AND ADMINISTRATIVE DIRECTION OF MAGISTRATE

As mentioned earlier, magistrates shall be subject to the administrative direction of the clerk of the court. The phrase "subject to the administrative direction of the clerk" under Rule 18, Alabama Rules of Judicial Administration, has been interpreted as meaning that the court clerk may require the magistrate to maintain regular office hours as well as designate the office from which the magistrate shall operate. Opinion of the Clerk (No. 20), 375 So.2d 1060 (1979).

The court clerk has no authority to discipline or remove a magistrate (except in district courts where the magistrate was appointed by the clerk of the district court, Rule 18.1 provides that magistrates shall serve at the pleasure of the appointing authority). In Opinion of the Clerk No. 20, the Clerk of the Supreme Court opined that the court clerk has no authority to take disciplinary action, such as suspension without pay, against a magistrate for failing to report to the office assigned by the court clerk, or for refusing to report to the office assigned by the court clerk, or for refusing to maintain any type of regular office hours; the proper action being a contempt proceeding under Rule 41, Alabama Rules of Judicial Administration. Rule 18-1(B)(1), Alabama Rules of Judicial Administration states that the Administrative Director of Courts, and not the clerk, is the appointing authority for the magistrates who qualify under Alabama Rules of Judicial Administration Rule 18-II(A).

NOTE: Discipline and removal of

magistrates related solely to the magistrate functions can only be exercised as provided for in the Rules of Judicial Administration. Any removal of the court clerk would appear to automatically terminate the status as magistrate. Discipline/removal of other magistrates must be by the ADC.... Attorney General Opinion No. 87-215, dated 6-17-87.

AUTHORITY OF MAGISTRATES LIMITED

The authority of magistrates is strictly limited by the statute [Sections 12-12-52, 12-14-51(c) and 12-17-251(c)] and Alabama Rules of Judicial Administration [Subdivisions I.(A)(2) and I.(B)(2) of Rule 18 for municipal court magistrates]. Opinion of the Clerk (No. 41), 436 So.2d 834 (Ala. 1983).

Municipal court magistrates have the authority to accept guilty pleas in cases involving minor traffic and non-traffic ordinance violations as provided by Rule 20, Alabama Rules of Judicial Administration. They may only accept pleas for offenses scheduled by applicable municipal ordinance or rule of the Supreme Court. Accepting pleas for offenses not scheduled is beyond the authority granted to municipal court magistrates by rule or law and subjects the magistrate to the criminal contempt power of the municipal court. Rule 20(F) ARJA.

A municipal court magistrate's authority to accept guilty pleas may be extended to infractions other than those listed in

the schedule of fines in subsection A of Rule 20, Alabama Rules of Judicial Administration and Rule 19(B)(2)(a). A municipality may, by ordinance, extend the schedule of infractions, excepting the prohibited categories of serious offenses listed in Rule 20(A).

Although Rules 18 and 20 of the Alabama Rules of Judicial Administration allow municipalities to extend the schedule of fines to include additional ordinance violations, the term "extend" does not appear to grant a municipality authority to change the fines established

for the scheduled offenses.

Opinion of the Clerk (No. 41), 436 So.2d 834 (Ala. 1983).

MAGISTRATES MAY NOT ISSUE SEARCH WARRANTS

Rule 18, ARJA, forbids a magistrate from issuing a search warrant unless (s)he is licensed to practice law in this State. Ringer v. State, 394 So.2d 69 (Ala.Crim.App.), cert. denied, 394 So.2d 72 (Ala. 1980). It appears that the authority to issue search warrants is limited to magistrates and warrant clerks of the district court.

MAGISTRATES HAVE JUDICIAL IMMUNITY, BUT CAUTION IS ADVISED

"Judicial Immunity" is defined as "the absolute protection from civil liability arising out of the discharge of judicial functions which every judge enjoys. Under the doctrine of judicial immunity, a judge is not subject to liability for any act committed within the exercise of his judicial function; the immunity is absolute in that it is applicable even if the actions of the judicial officer are taken in bad faith." Black's Law Dictionary 761 (5th ed. 1979). The common law doctrine of judicial immunity that shields judges from civil liability has long been acknowledged. Pickett v Richardson, 223 Ala. 683, 138 So. 274 (1931).

Public policy supports judicial immunity for the following reasons: (1) to insure finality of judgments; (2) to protect judicial independence; (3) to avoid continual attacks upon judges (and magistrates) who may be sincere in their conduct; and (4) to protect the justice system from falling into disrepute.

Generally, the acts of magistrates are either judicial or ministerial. Where the law defines and prescribes the duties to be performed by an officer with such precision and certainty as to leave nothing to the exercise of discretion or judgment, the act is characterized as ministerial, not judicial. However, where the act to be done involves the exercise of discretion or judgment, performance of that duty is a judicial act. Grider v. Talley, 77 Ala. 422 (1884); 46 Am.Jur. 2d Judges Section 83 (1969).

While engaging in the judicial function

of his or her office, a magistrate is protected by judicial immunity. Gore v. City of Hoover, 559 So. 2d 163 (Ala. 1988). **If a judge (magistrate) of a court of limited jurisdiction has subject matter jurisdiction and a colorable claim of personal jurisdiction, he is immune so long as he acts in good faith.** Bahakel v. Tate, 503 So. 2d 837 (Ala. 1987). **If a magistrate acts merely negligently, then he or she is protected by judicial immunity.** United Steelworkers of America v. O'Neal, 437 So. 2d 101 (Ala. 1983). **If, on the other hand, the allegation is that the magistrate acted with malice, and so is not entitled to the good faith immunity given to judicial officers of courts of limited jurisdiction....** Gore.

The U. S. Supreme Court has established a two-part test to determine whether an act was sufficiently "judicial" to warrant immunity. First, a judge is required to show that the questioned act was performed within his subject matter jurisdiction. Second, the questioned act must have been a judicial function. Immunity will be granted only when the tests for both jurisdiction and judicial function are satisfied. Stump v. Sparkmen, 435 U. S. 349 (1978).

In determining the scope of immunity from civil liability for judicial acts, a distinction must be drawn between acting in excess of general jurisdiction and acting in a clear absence of all jurisdiction. Bradley v. Fisher, 80 U.S. (13 wall.) 335 (1871).

MAGISTRATES ARE SUBJECT TO THE ALABAMA ETHICS ACT

The Alabama Ethics Law is found in Sections 36-25-1 through 30 of the Code of Alabama 1975. It prohibits persons in positions of public trust from betraying that trust by using their positions for their own personal gain, rather than the public good.

Originally, the act only applied to state officials and employees. Comer v. City of Mobile, 337 So.2d 742, 743 (Ala. 1976). However, in 1975, the Ethics Law was amended so as to apply to county and municipal officials and employees as well. Act No 130, 1975 Ala. Acts 603. **All (including municipal) court clerks, deputy clerks, registers, and magistrates fall within the definition of either "public official" or "public employee".**

A position as a governmental official or employee is a position of public trust in which the official or employee is expected to act in the best interest of the government. The **purpose** of the Ethics Law is to protect against conflicts of interest between the private and public interests of the governmental official or employee. The conflicts of interest are conflicts between an official's or employee's private interests and his official duties. Section 36-25-2.

The **State Ethics Commission** is composed of five members which appoints an executive director and the necessary staff and investigators. The Commission has the power to develop

the forms to be used in filing required financial reports, to investigate suspected ethics violations, and to report the violations to the appropriate law enforcement officials.

Upon request, the Commission may issue advisory opinions on the requirements of the ethics law. A written opinion will protect the person to whom it is directed from liability to either the state, county or municipal subdivision of the state because of any official action or actions performed or directed or advised in such opinion. §36-25-4(9).

Complaints must be written and the complainant must be identified. The Commission cannot take complaints over the telephone or orally and it cannot act on anonymous complaints. However, there are no such restrictions on the district attorney or attorney general. Rampey v. State, 415 So.2d 1184, 1187 (Ala.Cr.App. 1982).

VIOLATIONS

*Must be knowing and willful. §36-25-27(a)(1).

*Are prosecuted by the attorney general or district attorney. §36-25-27(b).

*Venue lies in the circuit court of the county of residence of the violator. §36-25-27(b).

*In addition to criminal prosecution, an offender may also be subject to

disciplinary proceedings including impeachment and/ or firing. §36-25-27(c).

PENALTY FOR CONVICTION

*Violation other than disclosure statement filing, is a felony. §36-25-27(a)(1).

*Disqualification from holding office. Section 36-2-1(a)(1). State ex rel. Graddick v. Rampey, 407 So.2d 823 (Ala.1981). (See, also, Eligibility Requirements for Magistrates, herein.

*No public reprimands.

SPECIFIC ACTS PROHIBITED

*Using official position for personal gain. §36-25-5.

*Using subordinates for personal service. Britain v. State, 518 So 2d 198 (Ala.Cr.App. 1987).

*Hiring spouse or dependents is prohibited.

*Telephone calls relating to the secondary employment or business should not be taken at the court's numbers.

*Does not prohibit outside or secondary employment or operation of a business, but sets restrictions.

*All considerations apply to spouse, dependents, and their businesses.

*Solicitation or receiving gifts, favors, etc. prohibited. §36-25-6.

*Dual employment prohibited. §36-25-7(a)

*Use or disclosure of confidential information for private financial gain prohibited. §36-25-8.

*Sets requirements regarding contracts with state, county (§36-25-11) or municipal governments (§11-42-12).

STATEMENT OF ECONOMIC INTERESTS REQUIRED. § 35-25-14(a).

*\$25,000 or more/year income.

*Additional disclosure statement required when services are provided to state, county, or municipality. §36-25-7(b)

*Disclosure required regarding representing certain clients. §36-25-10

CRIMINAL LIABILITY

*Ethics law violations. §36-25-27.

*Bribery - pecuniary benefit. §13A-10-61. Class C felony.

*Theft. 13A-8-2.

*Misappropriation, property. §13A-9-51.

*Interfering with judicial proceedings. Section 13A 10-130.

*Contempt. Section 12-1-8.

*Trading in public office. §13A-10-63.

*Misuse of confidential information. §13A 10-82.

*Political Activities §17-1-7 & 36-26-38.

FACTS AND CONSIDERATIONS IN ACCEPTING A GUILTY PLEA

Prior to accepting a guilty plea from a defendant, the magistrate should become familiar with the guidelines mandated by the United States Supreme court in Boykin v. Alabama, 395 U.S. 274 (1969).

According to Boykin, there must be an affirmative showing on the record that a defendant's guilty plea was voluntarily and intelligently made. It must be clear that the defendant was not coerced or induced into entering his guilty plea, that he was fully informed of the charges against him and knowingly waived his Constitutional rights. At a minimum, before the court accepts a guilty plea the defendant must be informed of:

1. his right to have his case heard by the municipal judge.
2. his right to confront his accusers.
3. his 5th Amendment privilege against compulsory self incrimination, applicable to the states through the Amendment to the United States Constitution.
4. the nature of the charges against him, including the maximum and minimum sentences that can be imposed for the charged offense.

In addition, there must be some indication on the record that the defendant voluntarily and understandably

entered a guilty plea after being informed in detail of his rights. Twyman v. State, 293 Ala. 75, 300 So.2d 124 (1974); Robinson v. State, 444 So.2d 885 (Ala.Crim.App. 1984).

The judgement entry should enumerate the specific Boykin rights which were explained to the defendant rather than stating in general manner that he was informed of his constitutional rights. Fields v. State, 330 So.2d 1088 (Ala.Crim.App. 1976); Bland v. State, 56 Ala.App. 547, 323 So.2d 730 (Ala.Crim.App. 1975); Starks v. State, 56 Ala.App. 501, 323 So.2d 387 (Ala.Crim.App. 1975).

If a defendant wants to plead guilty before the municipal court, prior to acceptance of the plea the court may use a written form to apprise the defendant of his constitutional rights and the consequences of such a plea. These documents, called "**Ireland waiver forms**" were first approved in Alabama in the case of Ireland v. State, Ala.App. 65, 250 So.2d 602 (1971), and later commended for use in combination with a personal interrogation by the judge (or magistrate) of which a record is made of the defendant's responses and the judge's inquiries.

The Alabama Supreme Court held in Twyman v. State, 293 So.2d 124 (1974) that a recorded or transcribed colloquy

between the trial judge and defendant was not required when a duly executed Ireland form was entered into the record and the defendant, his attorney and judge signed the form attesting that it had been read by the defendant or to him and that he understood and voluntarily waived his constitutional rights enumerated therein.

Despite the Court's holding that a verbal exchange between the defendant and judge need not appear in the record, the court (judge or magistrate) should personally address the defendant to assure that he understands his constitutional rights, in addition to Criminal Appeals noted in Moore v. State, 57 Ala.App. 93, 326 So.2d 157, (1975):

"A full and complete colloquy between the court and appellant, and transcribed by the court reporter, is preferable. (Citation omitted). But other methods of memorializing a proper guilty plea are available."

The Alabama Supreme Court has approved the procedure and forms to be used by magistrates to apprise the defendant of his constitutional rights and for the defendant to sign indicating his understanding of those rights and his voluntary and knowing waiver of those rights. Rule 19(C)(1), Alabama Rules of Judicial Administration, provides:

"A defendant charged with a traffic infraction, which is included within a schedule of fines prescribed for magistrates in accordance with these rules, may within seven days, or, in the

discretion of the magistrate, not later than 24 hours before the court date shown on the ticket:

(i) appear in person for a magistrate, sign the plea of guilty and waiver of trial provision on the ticket or on a form provided the magistrate and pay the fine and costs, provided, that the magistrate retains a copy of the ticket or other such form; or

(ii) sign the guilty plea and waiver of trial provisions on the ticket and mail the ticket and the amount of the fine and costs to the clerk of the court. Remittance by mail of the fine and costs constitutes a guilty plea and waiver of trial whether or not the guilty plea and waiver of trial provision on the ticket are signed by the defendant....

The Court approved as a part of the Uniform Traffic Ticket and Complaint the form and language of the defendant's plea of guilty in traffic offenses which could be accepted by magistrates. The Court further approved form UTC-7, Plea of Guilty/Waiver of Rights, which must be utilized by magistrates where defendants do not present their copy of the UTC.

In Rule 20(C), ARJA, the Supreme Court provided that a municipality may, by municipal ordinance, establish a schedule of fines for minor (traffic and non-traffic) ordinance violations wherein a defendant elects to plead guilty before a magistrate. Subsection (D) further provides that any defendant who elects to plead guilty to an offense listed in schedules established pursuant to Subsection (B)...must complete and sign a guilty plea and waiver form approved

by the Administrative Office of Courts ("AOC") and submit such form to the magistrate before such plea can be accepted.

Subsection (F) of Rule 20 provides that any magistrate who accepts a defendant's guilty plea for an offense not

included in a schedule established pursuant to this rule will be subject to the criminal power of the district or municipal court.

The following forms are the current forms approved by the Supreme Court and Administrative Office of Courts for accepting guilty pleas.

NOTICE

INSTRUCTIONS TO THE DEFENDANT

1. YOU MUST APPEAR IN COURT ON THE COURT APPEARANCE DATE SHOWN ON THE FRONT OF THIS TICKET EXCEPT AS PROVIDED IN NO. 3 BELOW.
2. IF YOU HAVE NOT SETTLED THIS CASE PRIOR TO THE APPEARANCE DATE AND YOU DO NOT APPEAR IN COURT ON SUCH DATE, A WARRANT WILL BE ISSUED FOR YOUR ARREST AND THE DEPARTMENT OF PUBLIC SAFETY WILL BE NOTIFIED TO SUSPEND YOUR DRIVER'S LICENSE.
3. YOU DO NOT HAVE TO APPEAR IN COURT FOR THE FOLLOWING OFFENSES UNLESS YOU HAVE BEEN CONVICTED OF TWO OR MORE TRAFFIC VIOLATIONS DURING THE PRECEDING 12 MONTHS (PARKING TICKETS EXCLUDED):

Driving on wrong side of road	Improper:	Brakes	Following too closely
Improper tag		Lights	No helmet (motorcycle rider)
Failing to:		Muffler	Running red light
Dim lights		Passing	Running stop sign
Stop at railroad crossing		Signal	Speeding (unaggravated)
Yield right of way		Turn	Stopping on highway

* Unaggravated speeding - less than 25 mph over limit

OTHER MINOR TRAFFIC OFFENSES MAY BE ADDED TO THE LIST WHICH WILL ALLOW YOU TO PLEAD GUILTY BEFORE A MAGISTRATE. YOU MAY CONTACT THE COURT SHOWN ON THE REVERSE SIDE OF THE TICKET TO DETERMINE IF THE OFFENSE WITH WHICH YOU ARE CHARGED IS INCLUDED IF YOU ARE CHARGED WITH ONE OF THE ABOVE OFFENSES AND HAVE NOT BEEN CONVICTED OF TWO OR MORE TRAFFIC VIOLATIONS DURING THE PRECEDING 12 MONTHS. YOU MAY ENTER A PLEA OF GUILTY EITHER IN PERSON OR BY MAIL TO THE COURT CLERK OR MAGISTRATE, NOT LATER THAN 24 HOURS BEFORE THE COURT DATE SHOWN ON THE TICKET. TO DO SO, YOU MUST SIGN THE "PLEA OF GUILTY/WAIVER OF RIGHTS" SET FORTH BELOW AND PRESENT THIS COPY OF THE TICKET WITH YOUR COURT COSTS AND FINE, EITHER IN PERSON OR BY MAIL TO THE COURT CLERK OR MAGISTRATE.

4. YOU MUST CONTACT THE COURT FOR THE AMOUNT OF THE FINE AND COURT COSTS.

PAYMENT MUST BE BY CERTIFIED CHECK OR MONEY ORDER IF MADE BY MAIL.

PLEA OF GUILTY/WAIVER OF RIGHTS YOU ARE HEREBY ADVISED OF YOUR RIGHTS AS A DEFENDANT IN THIS TRAFFIC CASE *Please Read Carefully*

I, THE UNDERSIGNED, DO HEREBY ENTER MY APPEARANCE ON THE OFFENSE CHARGED WITHIN THIS COMPLAINT. I UNDERSTAND THAT I HAVE CERTAIN CONSTITUTIONAL RIGHTS WHICH I WILL WAIVE IF I PLEAD GUILTY, NAMELY: THE RIGHT TO A TRIAL BEFORE THIS COURT AND TO APPEAL DE NOVO TO THE CIRCUIT COURT FOR TRIAL BEFORE A JUDGE OR JURY; THE RIGHT TO AN ATTORNEY OF MY CHOICE OR ONE APPOINTED BY THE COURT AT NO CHARGE IF I CANNOT AFFORD ONE; THE RIGHT AT TRIAL TO SUBPOENA WITNESSES ON MY BEHALF, TO CONFRONT AND CROSS-EXAMINE WITNESSES AGAINST ME AND TO ARGUE AND MAKE OBJECTIONS; AND THE RIGHT TO TESTIFY IN MY OWN BEHALF. I ALSO UNDERSTAND THAT I CANNOT BE FORCED TO TESTIFY AGAINST MYSELF AND THAT I AM PRESUMED INNOCENT AND THAT THIS PRESUMPTION CAN BE OVERCOME ONLY IF THE PROSECUTION CONVINCES THE JUDGE OR JURY OF MY GUILT BEYOND A REASONABLE DOUBT.

I UNDERSTAND MY CONSTITUTIONAL RIGHTS SET OUT ABOVE AND THE PUNISHMENT THAT WILL BE IMPOSED IF I ELECT TO PLEAD GUILTY BEFORE A MAGISTRATE. I ALSO UNDERSTAND THAT MY PLEA OF GUILTY WILL HAVE THE SAME FORCE AND EFFECT AS A JUDGMENT OF CONVICTION BY THE COURT AND THAT A RECORD OF SUCH CONVICTION WILL BE SENT TO THE DRIVER LICENSE DIVISION OF THE ALABAMA DEPARTMENT OF PUBLIC SAFETY (OR OF THE STATE WHERE I RECEIVED MY LICENSE TO DRIVE), WHICH MAY RESULT IN THE SUSPENSION OR REVOCATION OF MY DRIVER'S LICENSE AND MAY ADVERSELY AFFECT MY ABILITY TO MAINTAIN OR SECURE AUTOMOBILE INSURANCE. I FURTHER UNDERSTAND THAT SUCH CONVICTION MAY RESULT IN ENHANCED PENALTIES FOR SUBSEQUENT CONVICTIONS. I UNDERSTAND MY RIGHTS AND THE MATTERS SET OUT ABOVE AND HEREBY VOLUNTARILY AND KNOWINGLY WAIVE SUCH RIGHTS BY PLEADING GUILTY, AS EVIDENCED BY MY SIGNATURE BELOW. I FURTHER STATE UNDER PENALTY OF LAW (SECTION 13A-10-109, CODE OF ALABAMA 1975) THAT I HAVE NOT BEEN CONVICTED OF TWO OR MORE TRAFFIC VIOLATIONS DURING THE PRECEDING TWELVE MONTHS.

Defendant's Signature

Date

Defendant's Name (Print or Type)

5. FOR MINOR EQUIPMENT VIOLATIONS: LOCAL MUNICIPAL ORDINANCES MAY ALLOW YOU TO HAVE THE EQUIPMENT REPAIRED WITHIN 72 HOURS, EXCLUDING SUNDAYS AND LEGAL HOLIDAYS, AND PRESENT YOUR TICKET TO ANY LAW ENFORCEMENT OFFICER. THIS OFFICER, AFTER INSPECTION OF YOUR VEHICLE, MAY, BY SIGNING BELOW, RECOMMEND THAT THE CHARGE BE DISMISSED. YOU MUST THEN DELIVER OR FORWARD THE TICKET TO THE COURT CLERK AT THE ADDRESS ON THE FRONT OF THIS TICKET.

DEFECTIVE EQUIPMENT REPAIRED (OFFICER'S RECOMMENDATION TO DISMISS CHARGE)

Equipment Inspected			Inspecting Officer's Name, Printed and Signed		
Court Appearance Date			Time	Officer I.D.	Agency O.R.I.
Mo	Day	Year	<input type="checkbox"/> AM <input type="checkbox"/> PM		AL

State of Alabama Unified Judicial System Form UTC-7 Rev. 1/89	PLEA OF GUILTY/WAIVER OF RIGHTS (Plea Entered Before Magistrate Scheduled Traffic Offenses)	Case Number <hr/> UTC Number
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☐ In the District Court of _____ County, AL

☐ In the Municipal Court of _____

THE STATE OF ALABAMA
 or
 CITY/TOWN OF: _____

v. _____
 Defendant

NOTICE TO THE ABOVE NAMED DEFENDANT:

State law prohibits magistrates from receiving pleas of guilty from anyone convicted of two or more traffic offenses in the preceding 12 months. *If you have been convicted of two or more traffic offenses within the preceding 12 months, do not sign this plea of guilty. A false statement will subject you to penalties prescribed by law.*

You are charged with the offense of _____. In accordance with the Rules of Judicial Administration, you may elect to plead guilty to this offense before a magistrate and pay a fine of \$_____ plus court costs of \$_____, for a total of \$_____.

PLEA OF GUILTY - WAIVER OF RIGHTS

YOU ARE HEREBY ADVISED OF YOUR RIGHTS AS A DEFENDANT IN THIS TRAFFIC CASE.

Please Read Carefully

I, the undersigned, do hereby enter my appearance on the complaint for the offense cited above. I understand that I have certain constitutional rights which I will waive if I plead guilty, namely: the right to a trial before this court and to appeal *de novo* to the circuit court for trial before a judge or jury; the right to an attorney of my choice, or one appointed by the court at no charge if I cannot afford one; the right at trial to subpoena witnesses on my behalf, to confront and cross-examine witnesses against me and to argue and make objections; and the right to testify in my own behalf. I also understand that I cannot be forced to testify against myself and that I am presumed innocent and that this presumption can be overcome only if the prosecution convinces the judge or jury of my guilt beyond a reasonable doubt.

I understand my constitutional rights set out above and the punishment that will be imposed if I elect to plead guilty before a magistrate. I also understand that my plea of guilty will have the same force and effect as a judgment of conviction by the court and that a record of such conviction will be sent to the Driver License Division of the Alabama Department of Public Safety (or of the state where I received my license to drive), which may result in the suspension or revocation of my driver's license and may adversely affect my ability to maintain or secure automobile insurance. I further understand that such conviction may result in enhanced penalties for subsequent convictions. I understand my rights and the matters set out above and hereby voluntarily and knowingly waive such rights by pleading guilty, as evidenced by my signature below. I further state under penalty of law [Section 13A-10-109, Code of Alabama 1975], that I have not been convicted of two or more traffic violations during the preceding twelve months.

 Defendant's Signature

 Date

 Defendant's Name (Print or Type)

PLEA OF GUILTY/WAIVER OF RIGHTS
(Plea Entered Before Magistrate
Scheduled Non-Traffic Offenses)

Case Number _____

☐ In the District Court of _____ County, Alabama

☐ In the Municipal Court of _____

THE STATE OF ALABAMA

or

v.

Defendant

CITY/TOWN OF: _____

NOTICE TO THE ABOVE NAMED DEFENDANT:

You are charged with the offense of _____

In accordance with the Rules of Judicial Administration, you may elect to plead guilty to this offense before a magistrate and pay a fine of \$ _____ plus court costs of \$ _____, for a total of \$ _____.

PLEA OF GUILTY - WAIVER OF RIGHTS

YOU ARE HEREBY ADVISED OF YOUR RIGHTS AS A DEFENDANT IN THIS CRIMINAL CASE.

Please Read Carefully

I, the undersigned, do hereby enter my appearance on the complaint for the offense cited above. I understand that I have certain constitutional rights which I will waive if I plead guilty, namely: the right to a trial before this court and to appeal de novo to the circuit court for trial before a judge or jury; the right to an attorney of my choice, or one appointed by the court at no charge if I cannot afford one; the right at trial to subpoena witnesses on my behalf, to confront and cross-examine witnesses against me and to argue and make objections; and the right to testify in my own behalf. I also understand that I cannot be forced to testify against myself and that I am presumed innocent and that this presumption can be overcome only if the prosecution convinces the judge or jury of my guilt beyond a reasonable doubt.

I understand my constitutional rights set out above and the punishment that will be imposed if I elect to plead guilty before a magistrate. I also understand that my plea of guilty will have the same force and effect as a judgment of conviction by the court, which may result in enhanced penalties for subsequent convictions. I further understand that such conviction will be noted on the court's records, which are open to public inspection. I understand my rights and the matters set out above and hereby voluntarily and knowingly waive such rights by pleading guilty, as evidenced by my signature below.

Defendant's Signature

Date

Defendant's Name (Print or Type)

SAMPLE MAGISTRATE'S STATEMENT OF RIGHTS

Important: This or a similar statement must be made to the defendant before you accept a plea of guilty.

- * YOU MUST PLEAD GUILTY TO THE CHARGE ON THE TRAFFIC TICKET (OR OTHER COMPLAINT) IN ORDER TO SETTLE THIS CASE WITHOUT GOING TO COURT. IF YOU PLEAD GUILTY, THE FINE AND COST ARE _____ (GIVE TOTAL AMOUNT DUE) _____.**
- * IF YOU FEEL THAT YOU ARE NOT GUILTY, YOU HAVE THE RIGHT TO APPEAR IN COURT AND TO PLEAD NOT GUILTY AND TO HAVE THE CITY (OR STATE) TO PROVE YOUR GUILT IN A TRIAL BEFORE THE JUDGE.**
- * YOU HAVE THE RIGHT TO CROSS-EXAMINE WITNESSES AND TO CALL YOUR OWN WITNESSES.**
- * YOU HAVE THE RIGHT TO BE REPRESENTED BY AN ATTORNEY DURING THAT TRIAL.**
- * IF YOU ARE FOUND GUILTY IN THIS COURT, YOU HAVE A RIGHT TO APPEAL TO CIRCUIT COURT FOR A NEW TRIAL AND MAY HAVE YOUR CASE TRIED BY A JURY.**
- * YOUR PLEA TO ME WILL MEAN THAT YOU HEREBY WAIVE ALL OF THE RIGHTS THAT I MENTIONED ABOVE.**
- * WHEN I ACCEPT YOUR PLEA OF GUILTY, IT WILL BE EQUAL TO A CONVICTION IN THIS COURT. A RECORD OF YOUR CONVICTION WILL REMAIN ON FILE IN THIS COURT AND A COPY MAY BE FORWARDED TO THE DEPARTMENT OF PUBLIC SAFETY TO BE ENTERED ON YOUR DRIVING RECORD AND, IF SO, POINTS WILL BE ADDED TO YOUR RECORD.**
- * I CANNOT ACCEPT YOUR PLEA OF GUILTY UNLESS YOU SWEAR OR AFFIRM TO ME UNDER PENALTY OF PERJURY THAT YOU HAVE NOT HAD TWO OR MORE TRAFFIC VIOLATIONS WITHIN THE PAST TWELVE (12) MONTHS (MUNICIPAL PARKING TICKETS NOT INCLUDED.)**
- * DO YOU HAVE ANY QUESTIONS ABOUT ANYTHING I'VE SAID?**
- * DO YOU WISH TO ENTER A PLEA OF GUILTY AT THIS TIME?**