



# Ohio Board of Professional Conduct

## **OPINION 2022-09**

Issued October 7, 2022

Withdraws Adv. Op. 2004-3, 2009-7

### **Magistrate Simultaneously Holding a Nonjudicial Elective Office**

**SYLLABUS:** A full-time or part-time magistrate may not seek election to, or serve on, a local, city, or state board of education, city council, or county board of commissioners.

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# Ohio Board of Professional Conduct

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**APPLICABLE RULES:** Jud.Cond.R. 1.2, 1.3, 3.1, 4.5

#### QUESTION PRESENTED:

Is it proper for a full-time or part-time magistrate to serve on, or run for election to, a local, city, or state school board, a board of county commissioners, or a city council?

#### OPINION:

##### *Question 1*

The issue of whether a full-time or part-time magistrate may seek election to, or continue to serve in, a nonjudicial elective office is governed by the Code of Judicial Conduct.<sup>1</sup> Both judges and full-time and part-time magistrates are required to resign from judicial office upon becoming a candidate in a primary or general election for a

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<sup>1</sup> The Ohio Constitution and related statutes prohibit judges from holding any other public office of profit or trust under the authority of Ohio or the United States. See Ohio Const. Art. IV, Sec. 6(B); R.C. 141.04; R.C. 1901.11(D); R.C. 1907.16(B). However, magistrates, unlike judges, are not subject to the constitutional and statutory prohibitions on holding any other office of profit or trust. 1996 Ohio Op. Atty. Gen. No. 1996-032 (constitutional and statutory prohibitions on holding offices of profit or trust not applicable to magistrates.)

nonjudicial elective office. Jud.Cond.R. 4.5; Jud.Cond.R., *Application I(B)*. The “resign to run” rule prevents the misuse of judicial office and avoids the potential for sitting judges or magistrates from making improper pledges, promises, or commitments as candidates for a nonjudicial office. Jud.Cond.R. 4.5, cmt.[1]. The rule also prevents the appearance of impropriety and the entanglement of a court or its judicial officers in political controversies.

The underlying rationale of Jud.Cond.R. 4.5 for requiring a judicial officer to “resign to run” applies equally to a magistrate simultaneously holding another elective public office as a school board member, a city council member, or a county commissioner.<sup>2</sup> The Board concludes that because Jud.Cond.R. 4.5 prohibits a magistrate from holding judicial office while seeking a nonjudicial elected office, it would be inconsistent to read the rule as permitting a magistrate to hold a nonjudicial public office at any time. If a lawyer holds a nonjudicial elected office and subsequently receives an appointment as magistrate, the lawyer must either decline the appointment or resign from the nonjudicial public office.

A magistrate’s holding of another public office also implicates other judicial conduct rules. Magistrates must always act in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, avoid impropriety and the appearance of impropriety, and avoid abusing the prestige of office. Jud.Cond.R. 1.2, 1.3. The simultaneous holding of a position as magistrate and another public office may result in an impairment of public confidence, undermine judicial independence, and increase the potential that the prestige of the judicial office would be abused to advance the interests of the other public office. The holding of another public office when viewed as an extrajudicial activity also increases the risk that a reasonable person may question the judge’s independence, integrity, or impartiality when performing his or her judicial duties. Jud.Cond.R. 3.1(C).

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<sup>2</sup> In the case of a magistrate serving as a city council member, both R.C. 731.02 and R.C. 705.12 limit the holding of other public offices by a council member. Advice as to statutory compatibility issues is under the advisory authority of the Office of the Ohio Attorney General.