



Ohio Board of Professional Conduct

OPINION 2023-03

Issued June 9, 2023

Application of Code of Judicial Conduct to Mayor's Court Magistrates

SYLLABUS: A mayor's court magistrate is not subject to the Code of Judicial Conduct. A mayor's court magistrate may seek and hold an elected office. A mayor's court magistrate may seek and hold a leadership position in a local or state political party.

This nonbinding advisory opinion is issued by the Ohio Board of Professional Conduct in response to a prospective or hypothetical question regarding the application of ethics rules applicable to Ohio judges and lawyers. The Ohio Board of Professional Conduct is solely responsible for the content of this advisory opinion, and the advice contained in this opinion does not reflect and should not be construed as reflecting the opinion of the Supreme Court of Ohio. Questions regarding this advisory opinion should be directed to the staff of the Ohio Board of Professional Conduct.



Ohio Board of Professional Conduct

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QUESTIONS PRESENTED:

- 1). Whether a mayor's court magistrate may run for a partisan public office;
- 2). Whether a mayor's court magistrate may act as a leader of, or hold an office in, a partisan state, county, or local party;
- 3). Whether a mayor's court magistrate may seek a leadership position in a partisan state, county, or local party.

APPLICABLE RULES: Jud.Cond.R., *Application*, 4.1, 4.5

OPINION: To address the questions presented, the Board must first determine if the Code of Judicial Conduct applies to a mayor's court magistrate. The *Application* section of the Code of Judicial Conduct states that the Code applies to "[a] judge, within the meaning of this code, [who] is a lawyer * * * authorized to perform judicial functions *within a court*, including an officer such as a magistrate, court commissioner, or special master." Jud.Cond.R., *Application*, I(B) (emphasis added). However, the Code does not define the phrase "within a court."

Mayor's Courts

The Ohio Revised Code permits mayors of municipal corporations populated by more than 200 people and that are generally not the site of a municipal court to conduct a mayor's court. R.C. §1905.01(A). Mayor's courts have jurisdiction over cases involving violations of local ordinances, parking ordinances, and state traffic laws. *Id.* A person convicted in a mayor's court may appeal the conviction to the municipal or county court having jurisdiction within the municipal corporation. R.C. §1905.23.

Ohio law does not require mayors hearing cases in a mayor's court to be licensed to practice law. R.C. §1905.05(A). A lawyer admitted to practice law in Ohio for three years preceding an appointment or who has served as a judge of a court of record may be appointed by a mayor to serve as a mayor's court magistrate to hear cases in lieu of the mayor. *Id.* A person appointed as a mayor's court magistrate under this division is entitled to hear and determine prosecutions and criminal cases that are within the jurisdiction of the mayor's court as well as those matters that a mayor is prohibited by statute from hearing. *Id.*

Treatment of Mayor's Courts under Other Supreme Court Rules

Mayor's courts operate exclusively within the executive branch and are distinct from trial and appellate courts in the judicial branch in terms of their operation and oversight. Supreme Court rules other than the Code of Judicial Conduct demonstrate this distinction. For instance, the Supreme Court is granted superintending authority by the Ohio Constitution over all courts in Ohio that it exercises through the Rules of Superintendence for the Courts of Ohio. Oh. Const. Art. IV, Sec.5(A)(1). The Rules of Superintendence relate primarily to the internal operations of Ohio's trial and appellate courts. The Rules of Superintendence defines "court" as a court of appeals, court of common pleas, municipal court, or county court and applies only to these courts. Sup.R. 2(B). The definition does not include mayor's courts.

In addition, the Supreme Court has established separate professional conduct expectations for mayors acting within a mayor's court in the Ohio Traffic Rules. Traffic Rule 16, titled "*Judicial Conduct*" obligates mayors to conduct their court and their professional and personal relationships in accordance with the same standards as required of judges who are subject to the Code of Judicial Conduct. Mayors are also

required by Rule 16 to comply with specific educational requirements in the Mayor's Court Education and Procedure Rules. These education requirements expose mayors to a variety of topics including impartiality, conflicts of interest, *ex parte* communications, courtroom decorum and the sources of law in Ohio including the Ohio Constitution, Ohio Revised Code, Rules of Evidence, and the Code of Judicial Conduct. *See* Mayor's Court Education and Procedure Rules 4(A)(1)(h). However, there is no enforcement mechanism akin to the Ohio disciplinary system for a mayor's compliance with the Traffic Rules or the Mayor's Court Education and Procedure rules. Rather, mayors who fail to complete the education requirements are simply not permitted to hear prosecutions involving alcohol or drug-related traffic offenses. R.C. §1905.01.

The adoption of separate Traffic Rules and Mayor's Court Education and Procedure Rules, coupled with the exclusion of mayor's courts from application of the Rules of Superintendence, supports a conclusion that the Code of Judicial Conduct is reserved for those judicial officers who perform judicial functions in Ohio's trial courts, appellate courts, and the Supreme Court.¹ Moreover, if mayors are excluded from the application of the Code of Judicial Conduct, it stands to reason that a mayor's court magistrate, appointed by a mayor to perform the same duties, is similarly exempt from application of the Code.

Application of the Code of Judicial Conduct

As indicated above, the Application section of the Code of Judicial Conduct states that the Code applies to "[a] judge, within the meaning of this code, [who] is a lawyer * * * authorized to perform judicial functions within a court, including an officer such as a magistrate, court commissioner, or special master." Jud.Cond.R., *Application*, I(B). In contrast, the former Code of Judicial Conduct repealed in 2009 did not include language restricting the application of the Code to only lawyers performing judicial functions "within a court", but required compliance by "anyone, whether or not a lawyer" performing judicial functions without reference to a court. *See* former Code of Judicial Conduct, amended December 8, 1997. Under the former language, a mayor's court magistrate, and arguably even a nonlawyer mayor, could be disciplined for misconduct.

¹ In 2006, the Ohio General Assembly granted the Supreme Court the authority to adopt educational standards for mayors presiding over mayor's courts. R.C. 1905.03 and 1905.31.

See *Disciplinary Counsel v. Vukelic*, 102 Ohio St.3d 421, 2004-Ohio-3651 (mayor's court magistrate disciplined under former Code of Judicial Conduct for failing to disqualify himself when his current client made an appearance before him.) However, there have been no disciplinary complaints filed with the Board against mayor's court magistrates since the adoption of the current Code of Judicial Conduct in 2009.

Jud.Cond.R., *Application*, I(B) does not specifically include any executive branch officers or employees such as mayors, mayor's court magistrates, or administrative hearing officers within the definition of "judge." In fact, the cited comparison to the ABA Model Code specifically mentions that "[a]s executive branch employees, administrative hearing officers are excluded from application of the [Ohio] Code * * * *² Comparison to ABA Model Code of Judicial Conduct, Jud.Cond.R., *Application*. Consistent with this provision, the Board of Professional Conduct has never required mayor's court magistrates to file financial disclosure statements as required by magistrates serving in trial and appellate courts under Jud.Cond.R. 3.15.

Based on the foregoing, the Board interprets the phrase "within a court" to contemplate application of the Code to only judges or magistrates who are authorized to perform judicial functions within municipal courts, courts of common pleas, appellate courts, and the Supreme Court. Because a mayor's court is not treated by case law, statute, or Supreme Court rule as a court exclusively within the judicial branch, a lawyer serving as a mayor's court magistrate therefore is not performing "judicial functions within a court" as intended by the Application section of the Code of Judicial Conduct. Therefore, it is the opinion of the Board that the conduct of a mayor's court magistrate is not subject to the Code of Judicial Conduct and thus the Code does not govern the political activity of a mayor's court magistrate in terms of participation as a leader in a political party or seeking political office. Notwithstanding this conclusion, any professional misconduct committed by a lawyer appointed as a mayor's court magistrate may be subject to review under the Rules of Professional Conduct. See, e.g., Prof.Cond.R. 8.4(h), cmt.[5] (lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional rules of lawyers. * * *); Prof.Cond.R., Preamble [3] (some rules apply to

² The definition of "judge" in the ABA Model Code includes administrative hearing officers.

lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity.)