



A SELECTED READING

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Magistrates and the Duty of Impartiality

One of the most fundamental principles in the American judicial system is that a person accused of a crime has the right to be heard by an impartial decision maker.

To satisfy the constitutional guarantee of due process, the person judging the accused – which includes judges and magistrates and others responsible for determining guilt or innocence – must not have a personal interest in the case. Personal feelings and concerns should have no bearing on the outcome of a criminal case. This article examines the duty of judicial impartiality and the unique problem posed by magistrates.

Canons of Judicial Ethics

Alabama has a strong history of support for the independence of the judiciary. The first Code of Legal Ethics in the United States was formulated and adopted by the Alabama State Bar Association in 1887. This first code was adopted by other states, and finally by the American Bar Association in 1908.

The present Canons of Judicial Ethics require judges and their support staff – which includes magistrates and court clerks – to act in a manner that promotes public confidence in the courts. In fact, Canon 1 states that, “a judge should uphold the integrity and independence of the judiciary.” This canon recognizes that an independent and honorable judiciary “is indispensable to justice in our society.”

Canon 2 requires the judge “avoid impropriety and the appearance of impropriety in all his activities.” This canon demands that the judge avoid any conduct which is prejudicial to the administration of justice or which brings the judicial office into disrepute. The committee comments to this canon make it clear that a judge will be the subject of constant scrutiny and therefore must avoid engaging in any activity which has a negative impact on the reputation of the court. The comment states, “[P]ublic confidence in the judiciary is eroded by irresponsible or improper conduct by judges.”

Canon 3 governs the impartiality of judges. This canon provides that, “the judicial activities of a judge take precedence over his other activities.” The canon goes on to prohibit partisan influence on judges, and to require that they be patient, courteous and dignified toward litigants, according them the full right under the law to be heard. This canon also restricts public comment by judges on matters which are before his or her court.

Canon 3 also controls when a judge must refuse to hear a case. Essentially, any bias or financial interest – by the judge or the judge’s family – requires recusal. Additionally, the judge is disqualified if he or she served as a lawyer or with a lawyer in the case or if he or she is a material witness. This canon goes even further, requiring that the judge refuse to hear a matter when the judge, the judge’s spouse, or any person within the fourth degree of kinship to either of them, or the spouse of the relative, is named as a party or represents a party in the case, is known by the judge to have an interest in the case or is a material witness in the matter.

Canon 3 does allow the parties to consent to let the judge hear the case, regardless of the judge’s interest. This consent must be given in writing, signed and made a part of the record.

Canon 5 requires a judge to minimize extra-judicial activities to avoid any conflict with judicial duties and responsibilities. The judge may engage in outside activities only if they “do not detract from the dignity of his office or interfere with the performance of his judicial duties.”

A special exception is created for part time judges. Most municipal judges fall into this category. Part time judges – those who serve on a continuing basis but who are permitted to engage in other activities – are not required to comply with Canon 5D, E, F, and G, and Canon 6C. These canons govern the financial activities of a judge and require the filing of an annual financial disclosure statement.

The Duty of Impartiality

Court officers must maintain a balance between the interests of the state and those of the accused. There must not even appear to be such a likelihood or appearance of bias that the decision maker is not able to maintain that balance. While this may eliminate some judges who have no actual prejudice, “due process of law requires no less.” *Taylor v. Hayes*, 418 U.S. 488 (1974).

It is easy to recognize the potential for abuse when the decision maker has a direct, pecuniary interest in finding the accused guilty. For instance, if a justice of the peace receives a fee for each conviction but receives nothing if he finds the defendant innocent, it is clear that remuneration – or the loss of it – might color the decision of the justice of the peace.

It is perhaps more difficult to see a problem where no financial benefit accrues to the decision maker. However, due process embraces more than just the decision maker’s financial benefit. A person accused of a crime is presumed innocent. The prosecution carries the burden of proving the defendant guilty beyond a reasonable doubt. Any conflict which causes the decision maker to tilt the scales of justice in favor of the prosecution violates due process.

The Fourteenth Amendment to the United States Constitution guarantees that no person shall be “deprived of life, liberty or property without due process of law.” This amendment applies to state and local governments.

The Due Process Clause accords both procedural and substantive protection from invalid government action. Substantive due process assures individuals that in order to not deprive them of life, liberty or property, the governmental action will be reasonable, not arbitrary or capricious and bear a real and substantial relation to a legitimate governmental purpose. The procedural component of due process generally relates to the process by which a government deprives someone of life, liberty or property. Procedural due process challenges generally target whether a person was given adequate notice and a meaningful hearing opportunity.

In order to satisfy these constitutional requirements, a judicial decision maker must be detached from law enforcement functions. He or she cannot be controlled or directed by members of the police department or the prosecutor. When a request for a search warrant is presented, for example, a magistrate must determine for himself or herself that probable cause exists to justify issuing the warrant or must deny the request. Due process guarantees that the liberty or property interests of the accused are protected by requiring a fair hearing before an untainted decision maker.

The Florida Court of Appeals discussed the duty of impartiality in *State v. Steele*, 348 So.2d 398 (Fla. App. 1977). The court held that every litigant is entitled to nothing less than the “cold neutrality of an impartial judge.” Courts must scrupulously guard this right and refrain from any action which brings neutrality into question. The court stated that under no circumstances should any judge whose impartiality is even questioned try a case. A judge has a duty to recuse himself or herself if for any reason he or she cannot be impartial. *State v. Washington*, 266 N.W.2d 597 (Wis. 1978).

A part-time municipal court magistrate should not act as an attorney in any proceeding in which he or she has issued a warrant or obtained information by virtue of his or duties as magistrate. AGO 1993-129.

Personal Financial Interest in the Outcome

In *Tumey v. Ohio*, 273 U.S. 510 (1927), the defendant was convicted by the mayor of the Village of North College Hill, Ohio, for unlawful possession of alcoholic beverages. The mayor ordered the defendant to be imprisoned until the fine and costs were paid.

Under state law and city ordinance, the mayor received \$12 for each conviction. He received nothing if he found the defendant innocent.

The United States Supreme Court held that it violates due process to subject a defendant to the rulings of a judge with a direct, substantial, pecuniary interest in reaching a conclusion against him. Although \$12 was not a substantial amount of money, the court stated that “every procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the State and the accused denies the latter of due process.”

This same issue has arisen in several Alabama cases. In *Bennett v. Cottingham*, 290 F.Supp. 759 (N.D. Ala. 1968), and *Callahan v. Sanders*, 339 F.Supp. 814 (M.D. Ala. 1971), justices of the peace received a fee for each traffic conviction and nothing if they found the defendant not guilty. The courts held that this practice violated due process.

Detachment from Law Enforcement Activities

The need to keep court operations separate from police functions was discussed by the United States Supreme Court in *Shadwick v. Tampa*, 407 U.S. 345 (1972). In *Shadwick*, the defendant was arrested for impaired driving on a warrant issued by a municipal court clerk. The defendant argued the warrant was not valid because court clerks do not qualify as judicial

officers under the Fourth Amendment. Instead, because the court clerks were members of the civil service and were appointed by the city clerk and had no specific tenure in office, they lacked the institutional independence associated with the judiciary.

The Court disagreed and affirmed the conviction. The Court found that there was no showing of partiality or affiliation with prosecutors or police, nor was there any connection with law enforcement activities that might distort the independent judgment of the clerks. The Court was also influenced by the fact that the clerks were assigned to, and supervised by, the municipal court judge and the police or prosecutor.

A city which has contracted with the county to provide dispatching services cannot use its municipal court magistrate as the dispatcher because magistrates must maintain neutrality and detachment from law enforcement activities. AGO 2003-150. A municipal court magistrate does not have the authority to endorse a warrant of arrest under Section 15-10-10, Code of Alabama 1975. AGO 2002-251.

Magistrates

Alabama municipal courts are maintained at the expense of the municipality. Amendment 328, Section 145, Alabama Constitution, 1901. The municipality shall provide appropriate facilities and necessary support personnel for the municipal court and may provide for probation services, clerks and municipal employees designated as magistrates. *See*, Section 12-14-2, Code of Alabama 1975.

Amendment 328, Section 139, Alabama Constitution, 1901, mandates the creation of judicial officers with authority to issue warrants and vests those officers with judicial powers incidental to their purposes. Sections 12-14-50 through 12-14-52, Code of Alabama 1975, carry this mandate into effect, creating a municipal court administrative agency under the direct control of a magistrate.

Rule 18, Alabama Rules of Judicial Administration, provides for the appointment of municipal magistrates which include all municipal court clerks and any person within the clerk's office designated by the Administrative Director of Courts (ADC), upon the written recommendation of the clerk to serve as magistrate; and all persons appointed to serve as magistrates by the ADC upon the written recommendation of the municipal judge or judges. This rule requires all magistrates to remain neutral and detached from all law enforcement activities. The comment to Rule 18 states, "no person who is affiliated with the prosecution or the police, assigned to police or connected with law enforcement activities should be considered for appointment as a magistrate." Pursuant to Section 12-14-50, Code of Alabama 1975, a municipal judge has the authority to supervise all court employees generally and pursuant to Rule 18 of the Alabama Rules of Judicial Administration, the municipal court clerk, not the city clerk, has the authority to supervise all court magistrates and other court personnel regarding administrative matters. AGO 2005-098. Likewise, a municipal employee may not oversee the administrative functions and personnel in municipal court. AGO 2018-033. In 2018, the Attorney General's Office also issued an opinion stating that a city clerk may not also perform the functions of a municipal court clerk. AGO 2018-033.

It is important to note the court system could not operate as efficiently without the services of magistrates. Magistrates help ensure expeditious adjudication of ordinance violations and the issuance of warrants by handling many of the administrative functions for which the court is responsible. Many of the functions and powers of a magistrate are the same as those of a municipal judge. A magistrate's powers include issuing arrest warrants, granting bail in minor prosecutions, taking guilty pleas in minor cases where a schedule of fines has been provided and accounting for the moneys received by the court. While magistrates do not have to be attorneys, they must be knowledgeable about the law and legal procedures.

Magistrates are subject to the same due process requirements as judges. Their decisions – whether to issue warrants or set bond or any other use of power – must be free from personal prejudice and interest. Like judges, they must always be aware of the duty to balance the interests of the prosecutor and the accused and to ensure that the rights of the accused are fully protected by avoiding even the appearance of allowing outside forces to influence their decisions.

But magistrates pose a unique problem. In many municipalities, magistrates have been part of the police department for years. Yet, in order to protect due process, magistrates cannot be supervised by the police department. Instead, they must serve under the municipal court. Only by remaining detached can a magistrate ensure that the accused has a fair opportunity to have his side of the case heard.

The key to protecting due process appears to be avoiding anything other than the facts of the case at hand that might influence the magistrate's independent determination of guilt or innocence. If the magistrate's supervisor is a police chief or prosecutor, the possibility of unpleasant working conditions or even being fired for ruling against the police might influence the magistrate's decisions. Or, the magistrate, seeing himself or herself as part of the prosecution, may not give an accused the benefit of the doubt and might consider him or her guilty unless he or she proves himself or herself innocent. Magistrates, like judges, must not favor the prosecution over the defendant. *U.S. v. Gower*, 447 F.2d 187, cert. denied, 404 U.S. 850 (1971).

This is not always an easy task. In AGO 1990-251, the Attorney General was asked if anything prohibited appointing the wife of the chief of police as the municipal court clerk. The Attorney General ruled that no general laws prohibited this appointment. However, the Attorney General pointed out that prior to making the appointment, to ensure impartiality and detachment, the city should strongly consider the clerk's possible affiliation with the prosecution and police, the possibility of police supervision and her connection with law enforcement activities. Many times this will be difficult to determine and it may be better to appoint someone with no potential conflicts to the position.

Immunity

In the performance of any official duty provided for by Section 12-14-51, Code of Alabama 1975, a municipal magistrate shall have absolute judicial immunity from any liability arising from the execution of those duties.

Problems Caused by Unfair Trials

No conviction will be affirmed where the decision maker was not impartial. In *State v. Steele, supra*, the prosecution argued that it was harmless error for the judge to sit in judgment because the evidence of guilt was overwhelming. The court rejected this argument, stating that, "any argument based on the sufficiency of the evidence 'presupposes that an impartial judge evaluated the evidence at trial level and found against the party appealing the judgment.'" Evidence permitted by a biased judge might have been ruled inadmissible by an impartial judge.

So, at the very least, municipalities which assign magistrates to police departments face the probable added cost of retrying the case, as well as wasting the costs of the original trial.

There is also the possibility of damage awards under Section 1983. Section 1983 prohibits a municipality from having a policy or custom that deprives anyone of their constitutional or federal statutory rights. *Callahan v. Sanders*, cited above, permitted maintaining an action under Section 1983 where the decision maker was not impartial. Although the court in *Callahan* did not permit a damage award, it left open the door to such awards as well as the awarding of attorneys' fees.

Satisfying the constitutional requirements of due process through the impartiality of the judge and magistrate is not always easy. It requires sacrifice by judicial officials. Protecting the integrity of the judicial system demands no less. Officials must remain vigilant to any potential influences on their decisions. This means more than just refusing bribes. They must work to ensure that justice is done. This requires avoiding any improper influence on their judicial decisions. They must remain neutral until all the facts are in and avoid even the appearance of impropriety.

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