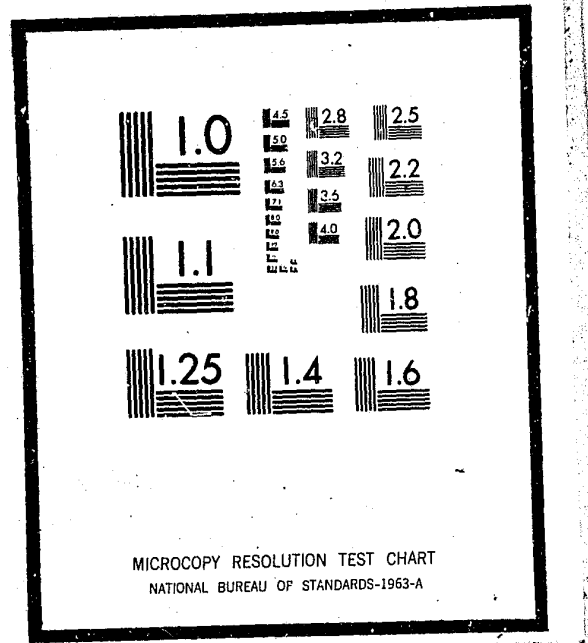


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## SOUTH CAROLINA LAW ENFORCEMENT ETV TRAINING PROGRAM

# DUTIES AND RESPONSIBILITIES OF MAGISTRATES

## PART II

Prepared by SOUTH CAROLINA LAW ENFORCEMENT DIVISION in cooperation with SOUTH CAROLINA EDUCATIONAL TELEVISION NETWORK

*Educational Television*  
South Carolina LAW ENFORCEMENT - ~~1977~~ TRAINING PROGRAM -  
From Crime to Court -  
DUTIES AND RESPONSIBILITIES OF MAGISTRATES,  
PART *N 2*



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Sponsored by:

South Carolina Law Enforcement Division

in co-operation with

South Carolina Educational Television Network

Endorsed by:

South Carolina Governor Robert E. McNair  
South Carolina Sheriffs' Association  
South Carolina Law Enforcement Officers' Association  
South Carolina Police Chiefs' Executive Association  
South Carolina F.B.I. National Academy Associates  
South Carolina Southern Police Institute Associates

PROGRAM OBJECTIVE:

This material will present many of the duties, obligations and responsibilities of the office of magistrate in the State of South Carolina.



LECTURE OUTLINE:

1. DOES A MAGISTRATE TAKE ANY TYPE OATH UPON ASSUMING OFFICE?

A. Yes.

(1) An oath is taken before the County Clerk of Court or anyone in the respective county authorized to administer oaths.

(a) Oaths must be recorded in writing and filed with the South Carolina Secretary of State.

(2) A prospective magistrate must swear:

(a) To enforce penalties prescribed by law against gaming (gambling). That is to say, "Any magistrate residing in any incorporated City or Town of this State on information by oath of any creditable witness that any of the criminal laws against gambling is being violated may grant his warrant under his hand and seal to break open and enter any closed door or room within such City whereby such offense is alleged to prevail."

(b) To the fact that he or she is qualified according to the Constitution of South Carolina to serve as a magistrate, that is to say, a qualified elector.

(c) That he or she will discharge duties of the position and preserve, protect and defend the Constitution of the State of South Carolina and the United States.

2. DOES A MAGISTRATE HAVE THE POWER TO ADMINISTER AN OATH WHICH IS BINDING?

A. Yes.

(1) Power is granted to administer any oath authorized or required by law which is not directed to be administered by any other authority, such as the County Clerk of Court.

(2) He has the power to take a renunciation of dower (a renunciation of dower is when a wife relinquishes her interest in property of her husband).

NOTE: The renunciation of dower is a very important operation and must be done in the proper manner, otherwise the renunciation of dower would not be valid (good).

3. HOW DOES A MAGISTRATE LEGALLY MAINTAIN DECORUM (ORDER) IN HIS COURTROOM?



A. Anyone who does not observe decorum (proper behavior) by making an insult to the magistrate or a juror or by the creation of a disturbance relative to the court's proceedings, may be cited by the magistrate for contempt.

(1) The fine or imprisonment imposed by the magistrate for contempt cannot exceed 12 hours imprisonment or a fine of \$20.00.

4. DOES A MAGISTRATE HAVE THE POWER TO SUBPOENA A WITNESS?



A. Yes.

(1) A magistrate may surmon any witness, who does not live more than 20 miles away, to appear before him at a certain time and place to give evidence.

(2) The summons to the witness must be served personally at least one day before such attendance is required.

(3) If the witness who has been summoned refuses or neglects to attend, the magistrate may issue a rule commanding the witness to be brought before him and if the witness refuses to give evidence without good cause, the magistrate may commit him to the County jail for contempt for a period no longer than one day or a fine not to exceed \$10.00.

(4) The cost of such rule (action) including the commitment and retention of custody of witnesses as well as the fine imposed may be levied on the goods and chattels of the witness.

5. MAY A MAGISTRATE UNDER THE LAW GRANT A NEW TRIAL IN A CASE TRIED IN HIS COURT?

A. Yes, unless the fine has already been paid or the sentence already been served.

(1) Provided that the magistrate determines for a good and valid reason the person did not have a fair and just trial. This might include improperly admitted evidence, improperly selected jury, any comment on facts by a magistrate and after-discovered evidence.

(a) The granting of a new trial is not the same as an appeal.

(b) Granting of a new trial in no way effects a request for change of venue.

(2) A motion for a new trial shall not be heard unless made within five days from the rendering of final judgment.

(a) The right of appeal from judgment shall exist for five days after the refusal for a motion of a new trial.

(b) A hearing on the motion for a new trial need not be held within five days after the judgment. In other words, so long as the motion is made within five days, the actual hearing may be held at any time thereafter.

6. DOES A MAGISTRATE OR RECORDER HAVE THE RIGHT TO SUSPEND A SENTENCE?

A. No.

7. IS IT NECESSARY THAT A WARRANT ISSUED IN PICKENS COUNTY, SOUTH CAROLINA BE COUNTERSIGNED BEFORE BEING SERVED IN GREENVILLE COUNTY, SOUTH CAROLINA?

A. Yes.

NOTE: If a magistrate that has territorial jurisdiction in a county within the state issues an arrest warrant and the arrest warrant is to be executed in the same county in another territorial jurisdiction, it must also be countersigned.

OBSERVATION: A warrant for the arrest of a person is issued in Charlotte, North Carolina. Can it be used as information to effect the issuance of a warrant in South Carolina should the accused be located in South Carolina? Yes--once the person is arrested in South Carolina and placed in the South Carolina jail awaiting a return to North Carolina, proceedings relative to the commitment must be recorded and a copy of these proceedings transferred to the Governor (this has to do with proceedings relative to extradition).

8. WHAT IS A MAGISTRATE'S COMMITMENT?

A. A magistrate's commitment in effect is a court order from the magistrate's court to effect an arrest of a person already sentenced.

ILLUSTRATION: An individual is sentenced to pay a fine or serve so many days in jail, elects to pay the fine and does not meet his obligation in remitting the fine. The magistrate then issues a court order (commitment) which in effect carries arrest authority.

NOTE: In the service of a commitment (court order) the officer executing same should inform the person being taken into custody under this commitment that the arrest is based on his failure to comply with the court directive rather than on the original charge.

9. DOES A MAGISTRATE HAVE AUTHORITY TO MAKE AN ARREST?

A. Yes.

(1) A magistrate shall arrest and commit, if necessary, any person who in his view shall have committed any crime.

(a) He may command any by-stander to assist him.

(1) If this by-stander refuses, he can be charged with having committed a misdemeanor.

OBSERVATION: It should be noted that a magistrate may cause to be arrested all rioters, disturbers or breakers of the peace and all who go armed unlawfully and offensively to the terror of the people.

10. CAN A MAGISTRATE APPOINT A SPECIAL INDIVIDUAL TO EFFECT AN ARREST OF A CERTAIN PERSON CHARGED OF A SPECIFIC CRIME?

A. Yes, provided the crime is a felony.

(1) The magistrate may select any citizen of the county to serve a warrant upon a specific individual for a specific charge provided he makes an endorsement on the warrant stating the necessity of this individual to serve the warrant conducive to its certain and speedy execution.

(2) This person upon service of this warrant shall have the same power as any constable as to the use of force.

11. DOES A POLICE OFFICER HAVE THE LEGAL AUTHORITY TO SET OR ACCEPT BOND?

A. No, unless authorized by statute or acting for the court.

NOTE: The exceptions to the rule that no police officer can set bond or accept bond are in the cases of the South Carolina Highway Patrol and the Wildlife Department who are authorized by statute to set or accept bond.

12. DOES A MAGISTRATE HAVE TO BE AVAILABLE AT ALL TIMES IN ORDER THAT AN INDIVIDUAL MAY HAVE AN OPPORTUNITY TO MAKE BOND?





A. There is nothing in the law that requires a magistrate to keep the facilities of his office available 24 hours a day, 7 days a week.

B. A magistrate cannot set an excessive bond.

NOTE: An example of an excessive bond would be a bond of \$5,000.00 on a charge of petty larceny.

13. WHAT POWER DOES A BONDSMAN HAVE RELATIVE TO THE INDIVIDUAL ON WHOM HE IS THE SURETY?

A. The bondsman has the power to go anywhere in the United States and return the individual to the place where the bond was set.

14. DOES A MAGISTRATE OR RECORDER HAVE JURISDICTION TO TRY AN INDIVIDUAL ACCUSED OF THE SECOND OFFENSE "DRUNK DRIVING"?

A. No, unless by a special statute. Statute Section 46-345 of S. C. Code sets forth the punishment for a second offense of drunk driving "is by a fine of not less than \$1,000.00 or imprisonment for one year or both".

NOTE: The jurisdiction of magistrates extends only to punishment by a fine of not more than \$100.00 or imprisonment of not more than 30 days. In some counties the limit for the magistrate is \$200.00. Therefore, to try and dispose of the second offense of drunk driving would be a matter beyond the jurisdiction of a magistrate's court.

OBSERVATION: The magistrate does have a right to set bond on the allegation of "second offense of drunk driving".

15. CAN A DEFENDANT IN A MAGISTRATE'S COURT OR MUNICIPAL COURT BE LEGALLY CONVICTED OF AN OFFENSE NOT CHARGED IN THE ARREST WARRANT? (OR BY A MEMBER OF THE HIGHWAY PATROL OR THE WILDLIFE DEPARTMENT SUMMONS?)

A. No.

(1) Section 43-111 of the S. C. Code provides that all proceedings before magistrates in criminal cases shall be commenced on information under cath plainly and substantially setting forth the specific charge upon which and only which a warrant of arrest be issued.

ILLUSTRATION: A man is charged with reckless driving in a warrant and the evidence produced at the trial supports a conviction for speeding. Inasmuch as the warrant on which the person was arrested specified the charge as reckless driving, he could not be convicted of speeding.

16. IF FACTS BROUGHT OUT IN A TRIAL DO NOT SUPPORT THE CHARGE ON WHICH THE MAN WAS TRIED, COULD HE BE SUBSEQUENTLY TRIED ON THE FACTS PRESENTED IN THE TRIAL?

A. No. This is double jeopardy.

(1) It is also noted that a defendant cannot waive the issuance of an arrest warrant by so stating in open court.

NOTE: This means that when a person is tried or enters a "guilty plea", there must be a warrant outstanding to support the allegations.

17. CAN A POLICE OFFICER WHO IS ALSO A WITNESS ACT AS A PROSECUTOR  
IN THE TRIAL AGAINST THE INDIVIDUAL ACCUSED?



A. Yes--the office of the Attorney General is of the opinion that a police officer can serve as a prosecutor in the trial of an accused to the extent of cross-examining the accused as well as any witnesses appearing in the case.

B. In the absence of a solicitor who is not required to appear in a magistrate's court, the police officer also has the legal right to demand a jury trial on behalf of the Government.



**STATEWIDE LAW ENFORCEMENT EDUCATION THROUGH TELEVISION**

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