

Protocol on the operation of the Magistrates' and Coroners' Courts.

The purpose of this protocol is to ensure the smooth operation of the Magistrates' and Coroners' Courts and support those appointed to the judicial office of Magistrate and Coroner in Anguilla in accordance with the core principles set out below.

Article 68 of the constitution provides that power to appoint, remove and exercise disciplinary control over magistrates vests in the Governor, acting after consultation with the Judicial Services Commission (JSC).

The Judicial Services Commission and the senior Magistrate of Anguilla have been consulted on the content of this protocol.

References below to Magistrate in this protocol should be taken to include a Coroner.

Core Principles underpinning this MoU

1. Magistrates are judicial officers under the constitution of Anguilla.
2. Independence of Magistrates performing their judicial function is a core constitutional principle in a democratic society.
3. Any challenge to a judicial decision must be brought by means of a legal challenge through the courts.
4. The public must have confidence in the court system and in the moral authority, competence and integrity of the magistracy.
5. It is essential that magistrates, individually and collectively, respect and honour their judicial office and strive to enhance and maintain confidence in the judicial system at all times.
6. Magistrates should be supported to maintain their professional competences by having access to suitable training
7. There must be a mechanism for addressing allegations of misconduct by a magistrate in a swift, fair and proportionate manner that maintains confidence in the legal system.

Training of magistrates.

Magistrates are responsible for their own professional development, including keeping up to date with developments in legislation and caselaw. The Judicial Education Institute, of under the auspices of the Eastern Caribbean Supreme Court, offers training to magistrates and some training may also be available via the Governor's office.

The High Court Judge appointed to sit in Anguilla by the Eastern Caribbean Supreme Court ("the Judge") in consultation with the Senior Magistrate, may make recommendations to the Governor for specific training needs based on the Judge's understanding of the issues and the needs of the Magistrates within the jurisdiction.

The Judge, in consultation with the Senior Magistrate, may also recommend best practice for the efficient and effective performance of judicial business.



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Welfare of Magistrates

The Judge may, where necessary, offer quarterly welfare meetings with Magistrates in Anguilla to offer professional support and guidance on issues to do with the running of the courts and workloads without straying into discussion of individual cases that may ultimately involve him.

Magistrates may also seek a meeting with the Governor or Deputy Governor to raise any welfare concerns.

Allegations of misconduct.

Misconduct means improper personal conduct by a magistrate.

Magistrates are expected to uphold the **standards of judicial conduct** set out in the code of conduct of the Eastern Caribbean Supreme Court. <https://www.eccourts.org/code-of-judicial-conduct>

Magistrates are also expected to uphold **standards of personal behaviour** in relation to court staff, users and judicial colleagues set out in Annex A. Breach of those standards will prima facie amount to misconduct.

Principles for addressing allegations of misconduct.

Allegations of misconduct shall be dealt with promptly in line with a fair and proportionate process set out in annex B.

Allegations of misconduct shall be dealt with confidentially.

[If there is a finding of misconduct and a sanction of removal imposed. a statement will be published on the court's website in accordance with the principle of transparency.]

Annex A: Statement of Expected Behaviour

This statement sets out the standards of behaviour expected from Magistrates (including Coroners) in and outside the court room; with each other, staff and users.

A Magistrate should seek to be courteous, patient, tolerant and punctual and should respect the dignity of all. It follows that a Magistrate should, as far as is reasonable, avoid extra-judicial activities that are likely to cause them to have to refrain from sitting because of a reasonable apprehension of bias or because of a conflict of interest that may arise from the activity.

A Magistrate has a responsibility to help foster a positive working environment, where diversity is recognised and valued, and everyone is treated with dignity and respect. We are one judiciary; no-one should feel that they are perceived as 'less than' because of their differences, personal or professional background, judicial office or jurisdiction. Therefore, a Magistrate should:

- treat others fairly and respectfully;
- be mindful of their authority and be careful not to abuse it;
- be aware of how their words and behaviour can affect others;
- remain patient and tolerant when encountering difficult situations;
- act professionally and courteously, and avoid shouting or snapping at anyone
- aim to ensure that no one involved in a hearing is exposed to any display of bias or prejudice;
- build effective working relationships with and support judicial colleagues and staff;
- welcome and support new colleagues; and
- be open to feedback in the discharge of their functions where something done may have caused discomfort or offence.

The same standards of behaviour are expected between judicial office holders as they are towards staff and users.

Upholding the contents of this statement will help all staff to foster and experience an inclusive and safe working environment, feel valued and be more confident to challenge unacceptable behaviour.

Annex B: Sanctions and the process for dealing with allegations of misconduct by a magistrate.

The relationship between misconduct and sanctions

While acts which fall short of misconduct can be dealt with informally by the Governor, a finding of misconduct must be accompanied by a recommendation for a sanction. The meaning of misconduct is “a breach of the standards of conduct expected of judicial office holders that is serious enough to require a disciplinary sanction.”

The sanctions for misconduct, in ascending order of severity:

- Formal advice
- Formal warning
- Reprimand
- Removal

The Governor issues sanctions after consultation with the Judicial Services Commission.

Suspension

The Governor can suspend a magistrate during a disciplinary investigation or an investigation for an offence if they decide that this would be appropriate while the investigation is ongoing. This is referred to as ‘interim suspension.’ It is not a sanction and implies no presumption of wrongdoing on the office holder’s part.

The Governor can also suspend a magistrate for any period during which any of the following applies:

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- a. the magistrate is subject to criminal proceedings;
- b. the magistrate has been convicted of a criminal offence pending the outcome of disciplinary proceedings.

Severity of sanctions

Formal advice is issued when Governor is satisfied that conduct, while not serious, was sufficiently improper to amount to misconduct, thereby warranting a formal response, recorded in writing, and kept on record. As with formal warnings and reprimands, a record of the sanction is retained by the Governor’s Office and may be considered in the event of any future findings of misconduct. Depending on the circumstances, formal advice may be considered appropriate in cases where the magistrate’s conduct was the result of a genuine misunderstanding or error of judgement on their part.

A **formal warning** will usually be issued where the magistrate has acted so inappropriately that they need to be put formally on notice that further misconduct is liable to result in a more severe sanction. A formal warning will typically be issued where the magistrate should have known their conduct would be unacceptable and there is a risk of damage to their standing / the reputation of the judiciary.

A **reprimand** issued by the Governor is likely to be appropriate where there is evidence of serious misconduct, but where the threshold for removal from office has not been met. Such cases could include repeated instances of inappropriate conduct or a single particularly serious act. Cases which entail a risk of significant damage to the reputation of the judiciary are also liable to fall into this category. Once an office holder has a reprimand on file, any future findings of misconduct carry a significant possibility of removal.

Removal will typically be used in cases of gross misconduct. This sanction should be reserved for misconduct so severe that it renders the magistrate's position untenable, such as cases in which the magistrate has been subject to a conviction or formal findings of dishonesty. A general rule of thumb is that removal is liable to be appropriate in cases of misconduct so serious that the office holder's continuation in office would undermine the reputation and standing of the wider judiciary in the eyes of the public. The Governor may also remove an office holder if they no longer fulfil the requirements of their role; for example, for failure without good reason to comply with sitting requirements.

The governor may also dismiss a magistrate, summarily, who is serving a custodial sentence imposed in criminal proceedings.

Process for investigating an allegation of misconduct.

(a) Informal complaint

Any person who wishes to raise a complaint against a magistrate may do so informally with the magistrate concerned, with the senior magistrate or Deputy Governor.

The senior magistrate or Deputy Governor may hold an informal meeting or meetings to discuss the issue with the parties with a view to resolving the issue or refer the matter to mediation with the agreement of those involved.

(b) Formal complaint

Where any person wishes to make a formal complaint about the conduct of a magistrate complaint shall be reduced in writing within three months of the matter complained of and sent to the Governor's office.

The Governor will not generally accept a complaint made outside of the three months period.

An extension of time to make a formal complaint may be granted in the Governor's discretion after considering the seriousness of the complaint and if there are exceptional reasons for the delay.

On receipt the Governor will determine within seven days, the course of action to be undertaken to resolve the complaint ensuring at all times that it is dealt with expeditiously.

The Governor in exercise of her discretion with or without consultation with the JLSC may dismiss a complaint where:

- the facts alleged are obviously untrue.
- even if the alleged facts were true, they would not require a disciplinary sanction.
- the complaint relates to a judicial decision and raises no question of misconduct.
- it is vexatious.

The Governor may invite the magistrate complained against to comment in writing on the complaint within 15 days after being notified and providing him with:

- A copy of the complaint.
- All supporting documents
- Any other supporting information ascertained during consideration of the complaint.

The governor may invite the complainant to respond to the response by the magistrate concerned within seven days.

A formal complaint must be accompanied by copies of all the documents within the control of the complainant to which they intend to refer.

Where having considered the documents provided the Governor considers the maximum sanction appropriate is a formal warning or formal advice the Governor may, after consulting the JLSC issue any sanction herself.

Process where the seriousness of the allegations means the potential sanction includes formal reprimand or dismissal.

Where the nature of the allegations are such that if proved the sanction may warrant a reprimand or dismissal the Governor in consultation with the Chief Justice will appoint a Judge, lawyer or other person they, in their discretion consider qualified ("the investigator") to undertake and investigate the allegation of misconduct made against the magistrate

The investigator will:

- a) Inform the magistrate of the complaint and set out and take such steps as he considers necessary to investigate the complaint. Every effort should be made to have the complaint investigated within 28 days of the investigator being appointed.
- b) Where the investigator is of the view that the complaint is frivolous or does not warrant further action, he /she shall so inform the governor, and recommend the complaint be dismissed;



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- c) Where the investigator forms the view that the complaint warrants further investigation, s/he shall inform the magistrate and the Governor accordingly.
- d) The investigator will consider whether the allegations are such that he should advise the Governor to consider suspending the Magistrate pending investigation and determination of the allegations (assuming the Governor has not already suspended the Magistrate).
- e) On completion of the investigation, the investigator shall submit a report of their findings to the Governor with recommendations, which may include that;
 - (i) the complaint should be dismissed,
 - (ii) the appropriate sanction should be a formal advice or a formal warning with reasons for his advice.
 - (iii) the appropriate sanction should be a reprimand or removal from office setting out his reason.
- f) Where the investigator has recommended a reprimand or removal, the Governor shall decide in consultation with the JLSC how best to set up a disciplinary tribunal to hear the allegations and make a recommendation to the Governor on the appropriate sanction.
- g) Where a decision is made to convene a disciplinary tribunal, the tribunal should commence sitting within 3 months unless the Governor extends the time.
- h) A magistrate is entitled to have legal representation at the tribunal.
- i) On completion of the tribunal the presiding officer or chairperson shall present its findings to the Governor with recommendations for the Governor's decision.
- j) The Governor shall inform the magistrate of her decision as soon as practicable and provide the magistrate with a copy of the tribunal report.