

**SUPREME COURT OF LOUISIANA**

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**ORDER**

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Acting in accordance with Article V, Sections 1, 5 and 25 of the 1974 Louisiana Constitution, and the inherent power of this Court, and considering the recommendation of the Judiciary Commission and the need to amend Rule XXIII of the Rules of this Court,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

Louisiana Supreme Court Rule XXIII, Section 26 is repealed and reenacted to read as follows:

**RULE XXIII. THE JUDICIARY COMMISSION**

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**Section 26. Reinstatement of Eligibility to Qualify for Judicial Office Following Removal.** Any former judge who has been removed from office by the Supreme Court pursuant to La. Const. Art. V § 25 (C) cannot and is prohibited from qualifying to become a candidate for any judicial office until certified eligible by this Court. A judge who has been removed from office shall not be eligible to seek certification for eligibility to qualify for judicial office if (1) he or she was removed from office after being convicted of any felony or a misdemeanor involving moral turpitude, or after the Court has determined that he or she has

engaged in conduct that would constitute a felony, whether or not there was a conviction, and (2) the Court states in its order of removal that the judge is permanently barred from seeking future judicial office. In the event the Court does not permanently prohibit the former judge from seeking future judicial office, the judge may, as provided hereafter, apply to the Judiciary Commission for a recommendation to the Court that the removed judge be declared eligible to qualify for judicial office.

(a) Not before and only after five years from the date the Court's order of removal became final, the former judge (hereinafter "respondent") may file a Petition for Reinstatement of Eligibility to Qualify for a Judicial Office (hereafter "the petition") with the Judiciary Commission of Louisiana. The petition shall contain the respondent's arguments why the reinstatement of eligibility is appropriate under this rule. The respondent bears the burden of proving his/her eligibility by clear and convincing evidence.

(b) The petition shall be filed under oath or affirmation under penalty of perjury and shall specify with particularity the manner in which the respondent meets the criteria hereinafter specified. Upon the filing of a petition, the proceeding is public. Commission and Special Counsel deliberations, as well as the deliberative and investigatory materials maintained by those entities, remain confidential. The Court may, on motion of either the Commission or the respondent, seal the record of the proceedings as it relates to medical records of the

respondent, and for any other compelling reason, in the interest of justice.

(c) At the same time the respondent files a Petition for Reinstatement of Eligibility to Qualify for a Judicial Office, the respondent shall also publish a notice of the petition in the official journal of every parish in the election district from which the respondent was elected prior to his/her removal. The notice shall inform the public about the petition and shall request that any individuals file notice of their opposition or concurrence with the judiciary commission within 30 days. The notice shall include the mailing address and telephone number of the Judiciary Commission.

(d) If the respondent was removed wholly or partially on the basis of a disability and/or impairment, including an addiction to alcohol or drugs, the respondent shall include with his or her petition pertinent documentation, information, and evidence demonstrating that the disability, impairment and/or addiction has been removed or is under control and not likely to recur. The respondent shall disclose in the petition the name of each and every psychiatrist, psychologist, physician, hospital and other institution by whom or in which the respondent has been examined or treated since the date his or her removal from judicial office became final. The respondent shall furnish written consent to the Judiciary Commission for the release of information and records relating to the disability, addiction, or other condition, if requested by the Judiciary Commission. If it deems necessary, the Judiciary Commission

may order and the respondent shall undergo a physical and/or mental evaluation by an appropriate professional of the Judiciary Commission's selection, the report of which shall be delivered to the Commission prior to a hearing on the petition.

(e) In formulating a recommendation regarding the respondent's petition, the Judiciary Commission may consider the following non-exclusive factors and/or conditions, and the respondent's compliance with the applicable factors and/or conditions:

(1) If the respondent's removal from office was based, in whole or in part, on his or her conviction of a misdemeanor, evidence regarding the disposition and/or completion of the related sentence;

(2) If the respondent's removal was based, in whole or part, on his or her conviction of a felony (and the Court has not ordered permanent removal, as provided for above), evidence regarding the disposition and/or completion of the related sentence or any pardon;

(3) Any pending criminal charge, whether misdemeanor or felony, shall be fully disclosed, and the respondent shall explain why the pending charge(s) should not result in a denial of his/her petition;

(4) Where alcohol or drug abuse formed the basis for the respondent's removal, in addition to the requirements of Section 26(d), the respondent shall not be reinstated as eligible to qualify unless he or she has:

- pursued appropriate rehabilitative treatment and been certified by a reputable care facility to be drug or alcohol free, as applicable, and in compliance with the care plan established for the respondent;
- remained alcohol or drug free, as applicable, for at least one year; and
- has demonstrated that he or she is likely to continue to abstain from alcohol or other drugs, as applicable.

In assessing this criterion, the Judiciary Commission may consult with and rely upon expert opinions and/or reports of the Lawyer Assistance Program;

(5) The respondent's past and current status with the Louisiana State Bar Association, if applicable, including meeting all requirements imposed upon lawyers with regard to continuing legal education and payment of all dues and assessments;

(6) The respondent has fully complied with the terms and conditions of all prior disciplinary orders or agreements. In this regard, the respondent shall certify that there are no pending complaints, investigations, or formal charges filed against him or her with the Office of Disciplinary Counsel or the Attorney Disciplinary Board. In the event any complaint(s), investigation(s), or formal charge(s) are pending against the respondent, such matters shall be fully disclosed. The respondent shall explain why the pending complaint(s), investigation(s), or charge(s) should not result in the denial of the petition. Further, the respondent shall set forth and describe in detail any such complaints, investigations or formal charges lodged or undertaken against him or her with respect to lawyer conduct, but which have been closed or resolved during the time since the judge's removal from office and explain why such matters should not result in a denial of the petition;

(7) Notwithstanding the conduct for which the respondent was removed, whether the respondent has the requisite honesty and integrity to hold judicial office;

(8) Whether the respondent has timely paid all costs cast against him or her by the Court in connection with Judiciary Commission and/or lawyer disciplinary proceedings;

(9) If applicable, the respondent shall obtain a certification from the Client Assistance Fund that no payments have been made by the Fund to any of the respondent's clients. To the extent that Client Assistance Funds have been paid to qualifying clients, the respondent shall obtain a certification from the Fund that the Fund has been reimbursed in its entirety, or alternatively, that a payment plan is in effect which will result in reimbursement to the Fund. The Judiciary Commission may take into consideration whether or not the respondent's client has been made whole by either the respondent or the Client Assistance Fund; and

(10) Whether the respondent has corrected any problem or situation adverse to others that arose as the result of the misconduct which led to his or her removal, assuming the possibility of a remedy therefor.

(f) Upon the filing of the petition, the Judiciary Commission shall review the contents thereof and determine whether to investigate the factors bearing on the petition for eligibility to run for judicial office. If the Judiciary Commission deems necessary, the Commissioners shall conduct a hearing as soon as practical after conclusion of an investigation, if any. The Office of Special Counsel shall act under the direction of the Commission with respect to the investigation, if any, and hearing, if any, on the issues presented.

Within 60 days of the filing of the petition, the Commission shall advise the respondent in writing if it intends to investigate the matter and/or order a hearing. The Commission shall within 60 days after the conclusion of the investigation and/or hearing, or within 60 days after the filing of the petition if the Commission does not order an investigation and/or hearing, file its recommendation with this Court. The Court, in its discretion, may order oral argument on the Commission's recommendation.

(g) The Commission may recommend the assessment of hard costs upon the respondent as the members deem necessary. No reinstatement will become effective prior to the respondent's payment of costs assessed by the Court, upon recommendation of the Judiciary Commission.

(h) If the Court finds that the respondent has satisfied the criteria or has presented good and sufficient reason, this Court may deem the respondent eligible to qualify to run for judicial office and may issue written reasons therefor. Within 30 days of any Court decision reinstating the respondent's eligibility, the respondent shall file into the record of the Court, and serve upon the Judiciary Commission, an affidavit specifying that all assessed costs have been paid to the Judiciary Commission.

(i) A petition may be filed no more than once per calendar year and after the first filing, no sooner than one year from the date of the

Court's decision denying respondent's previous petition. Following the denial of a petition, the Judiciary Commission may decline to make a further recommendation to the Court concerning the respondent's eligibility to run for judicial office unless the respondent submits substantial evidence not previously submitted to the Judiciary Commission for consideration in an earlier petition.

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This rule change shall become effective on January 1, 2008, and shall remain in full force and effect thereafter, until amended or changed through future Orders of this Court.

New Orleans, Louisiana, this \_\_\_\_\_ day of September, 2007.

FOR THE COURT:

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Pascal F. Calogero, Jr., Chief Justice