

# 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 Louisiana Constitution of 1974, and the inherent power of this Court, and considering the need to enact a Court Rule pertaining to financial disclosure by judges,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

Part N, Rule XXXIX of the Rules of the Supreme Court of Louisiana be and is hereby enacted to read as follows:

### **PART N. FINANCIAL DISCLOSURE BY JUDGES**

#### **Rule XXXIX. Financial Disclosure**

##### **Section 1.**

A. All elected judges and justices of the peace shall annually file a financial statement as provided in this rule. Judges shall file financial statements in accordance with Section 2. Justices of the peace shall file financial statements in accordance with Section 3.

For purposes of this Rule, the word “individual” or “person” means the judge or justice of the peace who is required to file a financial statement.

##### **Section 2.**

A. All elected judges shall annually file a financial statement as provided in this Section. The financial statement required by this Section shall be filed by May 15<sup>th</sup> of each year during which the person holds an office or position included in Section 1, and by May 15<sup>th</sup> of the year following the termination of the holding of such office or position.

B. Notwithstanding the provisions of Subsection (A) of this Section, the financial statement required by this Section may be filed within thirty days after the individual files his or her federal tax return for the year on which he or she is reporting, taking into consideration any extensions filed by the individual, provided that the individual notifies the Office of the Judicial Administrator, Supreme Court of Louisiana, prior to the deadline provided in Subsection (A) of this Section of his or her intention to do so.

C. The financial statement required by this Section shall be filed on a form prescribed by the Office of the Judicial Administrator, Supreme Court of Louisiana, and approved by the Court, and shall include the following information for the preceding calendar year:

(1) The full name and office address of the individual who is required to file.

(2) The full name of the individual's spouse, if any, and the spouse's occupation and principal business address.

(3) The name of the employer, job title, and a brief job description of each full-time or part-time employment position held by the individual and/or spouse.

(4)(a) The name, address, brief description of, and nature of association with and the amount of interest in each business in which the individual or spouse is a director, officer, owner, partner, member, or trustee, and in which the individual or spouse, either individually or collectively, owns an interest which exceeds ten percent of that business.

(b) The name, address, brief description of, and nature of association with a nonprofit organization in which the individual or spouse is a director or officer.

(5)(a)(i) The name, address, type, and amount of each source of income received by the individual or spouse, or by any business in which the individual or spouse, either individually or collectively, owns an interest which exceeds ten percent of that business, which is received from any of the following:

(aa) The state or any political subdivision as defined in Article VI of the Constitution of Louisiana.

(bb) Services performed for or in connection with a gaming interest as defined in R. S. 18:1505.2(L)(3)(a).

(ii) Notwithstanding the provisions of Subsection D of this Section, amounts reported pursuant to this Subparagraph shall be reported by specific amount rather than by category of value.

(b) The name and address of any employer which provides income to the individual or spouse pursuant to the full-time or part-time employment of the individual or spouse, including a brief description of the nature of the services rendered pursuant to such employment and the amount of such income, excluding information required to be reported pursuant to Subparagraph (5)(a) of this Subsection.

(c) The name and address of all businesses which provide income to the individual or spouse, including a brief description of the nature of services rendered for each business or of the reason such income was received, and the aggregate amount of such income, excluding information required to be reported pursuant to Subparagraph (5)(a) or (b) of this Subsection.

(d) A description of the type of any other income, exceeding one thousand dollars received by the individual or spouse, including a brief description of the nature of the services rendered for the income or the reason such income was received, and the amount of income, excluding

information required to be reported pursuant to Subparagraphs (5)(a), (b), or (c) of this Subsection.

(6) A brief description, fair market value or use value as determined by the assessor for purposes of *ad valorem* taxes, and the location by state and parish or county of each parcel of immovable property in which the individual or spouse, either individually or collectively, has an interest, provided that the fair market value or use value as determined by the assessor for purposes of *ad valorem* taxes for such parcel of immovable property exceeds two thousand dollars.

(7) The name and a brief description of each investment security having a value exceeding five thousand dollars held by the individual or spouse, excluding variable annuities, variable life insurance, variable universal life insurance, whole life insurance, any other life insurance product, mutual funds, education investment accounts, retirement investment accounts (including state retirement plans, deferred retirement option plan (DROP) accounts, 401K retirement accounts, individual retirement accounts (IRAs) and deferred compensation accounts), government bonds, and cash or cash equivalent investments. This Paragraph shall not be deemed to require disclosure of information concerning any property held and administered for any person other than the individual or spouse under a trust, tutorship, curatorship or other custodial instrument.

(8) A brief description, amount, and date of any purchase or sale, in excess of five thousand dollars, of any immovable property and of any personally owned tax credit certificates, stocks, bonds, or commodities futures, including any option to acquire or dispose of any immovable property or of any personally owned tax credit certificates, stocks, bonds, or commodities futures. This Paragraph shall not be deemed to

require disclosure of information concerning variable annuities, variable life insurance, variable universal life insurance, whole life insurance, any other life insurance product, mutual funds, education investment accounts, retirement investment accounts (including state retirement plans, deferred retirement option plan (DROP) accounts, 401K retirement accounts, individual retirement accounts (IRAs) and deferred compensation accounts), government bonds, cash or cash equivalent investments.

(9) The name and address of each creditor, and name of each guarantor, if any, to whom the individual or spouse owes any liability which exceeds ten thousand dollars on the last day of the reporting period excluding:

(a) Any loan secured by movable property, if such loan does not exceed the purchase price of the movable property which secures it.

(b) Any liability, secured or unsecured, which is guaranteed by the individual or spouse for a business in which the individual or spouse owns any interest, provided that the liability is in the name of the business and, if the liability is a loan, that the individual or spouse does not use proceeds from the loan for personal use unrelated to the business.

(c) Any loan by a licensed financial institution which loans money in the ordinary course of business.

(d) Any liability resulting from a consumer credit transaction as defined in R. S. 9:3516(13).

(e) Any loan from an immediate family member, unless such family member is a registered lobbyist, or his or her principal or employer is a registered lobbyist, or he or she employs or is a

principal of a registered lobbyist, or unless such family member has a contract with the state.

(10) A certification that such individual has filed his or her federal and state income tax returns, or has filed for an extension of time for filing such tax returns.

D. When an amount is required to be disclosed pursuant to this Section, it shall be sufficient to report the amount by the following categories:

- (a) Category I, less than \$5,000.
- (b) Category II, \$5,000-\$24,999.
- (c) Category III, \$25,000-\$100,000.
- (d) Category IV, more than \$100,000.

E. The financial statement shall be filed with the Office of the Judicial Administrator, Supreme Court of Louisiana, and shall be accompanied by the affidavit of the individual filing it certifying that the information contained in the financial statement is true and correct to the best of his or her knowledge, information, and belief. The financial statement shall be a matter of public record and shall be subject to public inspection and copying.

F.(1) For purposes of this Section, an individual or spouse shall not transfer any asset, interest, or liability required to be disclosed pursuant to this Section to any person or business for the purpose of avoiding disclosure, unless such transfer is irrevocable. A transfer shall not be irrevocable if there exists any contract, letter, counter letter, note, or any other legally enforceable agreement or authority which if exercised or enforced would require or authorize any asset, interest, or liability transferred by an individual or spouse to a person or business to revert back to such individual or spouse.

(2)(a) The sale of property subject to owner financing shall not be a transfer prohibited by Paragraph (1) of this Subsection provided that the

income from the sale is disclosed in accordance with the provisions of this Section.

(b) A recorded bond for deed contract shall not be a transfer prohibited by Paragraph (1) of this Subsection.

G. For purposes of this Section, the following words shall have the following meanings:

(1) “Business” means any corporation, limited liability company, partnership, sole proprietorship, firm, enterprise, franchise, association, business, organization, self-employed individual, holding company, trust, or any other legal entity or person.

(2)(a) “Income” for a business shall mean gross income less both of the following:

(I) Costs of goods sold.

(ii) Operating expenses.

(b) “Income” for an individual shall mean taxable income and shall not include any income received pursuant to a life insurance policy.

H. Nothing in this Section shall require the disclosure or reporting of income derived from child support and alimony payments contained in a court order or from the reporting or disclosure of income derived from disability payments from any source.

### **Section 3.**

A. All elected justices of the peace shall annually file a financial statement as provided in this Section.

B. The financial statement required by this Section shall be filed by May fifteenth of each year during which the person holds an office included in

Subsection A of this Section and by May fifteenth of the year following the termination of the holding of such office.

C. The financial statement required by this Section shall be filed on a form prescribed by the Office of the Judicial Administrator, Supreme Court of Louisiana, and shall include the following information for the preceding calendar year:

(1) Any and all income exceeding two hundred fifty dollars received during the immediately preceding calendar year by the individual who is required to file, the spouse of such individual, or any business in which such individual or his or her spouse, individually or collectively, owns at least ten percent, which is received from any of the following:

(a) The state or any political subdivision as defined in Article VI of the Constitution of Louisiana.

(b) Services performed for or in connection with a gaming interest as defined in R. S. 18:1505.2(L)(3)(a).

(2) A certification that such individual has filed his or her federal and state income tax return, or has filed for an extension of time for filing such tax return.

D. For purposes of this Section, the following words shall have the following meanings.

(1) “Business” and “income” shall have the same meanings as provided in Section 2 of this Rule.

#### **Section 4. Enforcement and Penalties.**

A.(1) If a person fails to timely file a financial statement as required by this Rule, or a person omits any information required to be included in the statement, or the Office of the Judicial Administrator, Supreme Court of Louisiana, has reason to believe information included in the statement is inaccurate, the Judicial Administrator’s Office shall notify the person of such

failure, omission or inaccuracy by sending him or her by certified mail a notice of delinquency immediately upon discovery of the failure, omission, or inaccuracy.

(2) The notice of delinquency shall inform the person that the financial statement must be filed, or that the information must be disclosed or accurately disclosed, or that a written answer contesting the allegation of such a failure, omission, or inaccuracy must be filed no later than fourteen business days after receipt of the notice of delinquency. The notice shall include the deadline for filing the statement, filing the answer, or disclosing or accurately disclosing the information.

(3) The Office of the Judicial Administrator shall inform the person in the notice of delinquency that failure to file the statement, to disclose or accurately disclose the information, or to file an answer contesting the allegation by the deadline shall result in the imposition of penalties as provided in Subsection F of this Section.

B. If the person files the statement, provides the omitted information, or corrects the inaccurate information prior to the deadline contained in the notice of delinquency, no penalties shall be assessed against the person.

C. (1) If the person fails to file the statement, fails to provide the omitted information, fails to correct the inaccurate information, or fails to file a written answer prior to the deadline contained in the notice of delinquency, the Judicial Administrator's Office shall refer the matter to the Judiciary Commission.

(2) If the individual files a written answer contesting the allegations contained in the notice of delinquency, or if a complaint is received by the Office of the Judicial Administrator after a financial statement has been filed that is directed to the accuracy or completeness of a particular statement, the matter shall be referred to the Judiciary Commission.

(3) In the event a written complaint is received by the Commission after a financial statement has been filed that is directed to the accuracy or completeness of a statement, and the complaint is not deemed by the Commission to be frivolous, the Commission shall mail the complaint by certified mail to the judge or justice of the peace who is the subject of the complaint. The judge or justice of the peace shall be asked to answer the complaint within fourteen business days after receipt of the complaint.

D. Upon a finding by the Judiciary Commission in connection with a written answer that no violation has occurred, no penalties shall be assessed against the person.

E. If the Judiciary Commission determines in connection with a written answer that the person may have failed to file the statement or failed to disclose or accurately disclose the required information, the matter shall be the subject of a hearing to be convened in accordance with Subsection (F) of this Section.

F. (1) In the event a matter pertaining to financial disclosure is referred to the Commission, and the Commission finds that the person may have failed to file a financial statement, or failed to disclose or accurately disclose the required information, the Commission shall order that a hearing be conducted before a hearing officer designated by the Court pursuant to La. S. Ct. Rule XXIII, Section 29(a). A hearing officer shall be selected for the hearing in accordance with La. S. Ct. Rule XXIII, Section 29 (b).

(2) The procedures for convening and conducting the hearing shall be in accordance with La. S. Ct. Rule XXIII, §29.

(3) The hearing will be limited to the following issues: (i) whether or not the individual failed to file a financial statement; (ii) whether or not the individual failed to disclose or accurately disclose the required information; and (iii) whether the failure was willful and knowing.

(4) Within fifteen days after the conclusion of the hearing, the hearing officer shall submit a report to the Judiciary Commission that contains proposed findings of fact and conclusions of law, if applicable. No recommendation shall be made by the hearing officer as to the issues to be considered by the Commission and/or the Court pursuant to subpart (3) of this subsection.

(5) In the event the Commission decides that no violation has occurred, the Commission shall issue a written determination to that effect. In that event, no penalties shall be assessed against the person, and no recommendation shall be made to the Court.

(6) If the Commission determines the person has failed to file a statement, or failed to disclose or accurately disclose the required information, the Commission shall file the record and a recommendation with the Court. In that event, the Commission shall recommend the imposition of civil penalties in accordance with subpart 7 of this subsection, and shall also make a recommendation as to whether the violation was willful and knowing.

(7) The Court shall assign the case for argument summarily in accordance with La. S. Ct. Rule VI, Section 3. Judgment shall be rendered promptly following argument. If the Court determines that no violation has occurred, no penalty shall be assessed. In the event the Court determines that a violation has occurred, the Court shall assess civil penalties in the following amounts:

(a) One hundred dollars per day for statements required by Section 2 of this Rule.

(b) Fifty dollars per day for statements required by Section 3 of this Rule.

If the judge or justice of the peace filed a written answer contesting the allegations prior to the deadline contained in the notice of delinquency, or prior to the deadline for filing an answer to a complaint, penalties shall be

assessed from the date the Commission recommended the imposition of civil penalties.

(8) In the event the Court determines that a person has willfully and knowingly failed to file a statement, willfully and knowingly failed to timely file a statement, willfully and knowingly omitted information from a statement, or willfully and knowingly provided inaccurate information in a statement, the Court shall forward its findings to the district attorney in the parish which is the domicile of the person who filed the report for appropriate action.

D. (1) The Office of the Judicial Administrator, Supreme Court of Louisiana, shall post on its website on the Internet a list of all judges and justices of the peace who have failed to file, or failed to timely file, or failed to provide omitted information, or failed to provide accurate information as required by this Rule.

(2)(a) No person shall be included on the list unless he or she fails to file, to provide omitted information, or to provide accurate information by the deadline included in the notice of delinquency, nor shall he or she be included on the list if he or she has filed an answer or an answer contesting the allegations included in the notice of delinquency.

(b) A person shall be removed from the list within two business days after filing the statement or accurately disclosing the required information.

E. If a person who is required to disclose information required by Sections 2 or 3 of this Rule discovers an error or inaccuracy in the information he or she disclosed and files an amendment to such disclosure correcting such error or inaccuracy prior to the receipt of a notice of delinquency, no penalties shall be assessed against the person, and the Office of the Judicial Administrator shall replace the initial disclosure with the amendment thereto in the official records of the Office of the Judicial Administrator.

**Section 5.**

All financial statements filed pursuant to this Rule shall be matters of public record. Any notice of delinquency and any referral by the Office of the Judicial Administrator to the Judiciary Commission pursuant to this Rule shall be a matter of public record. Any pleadings that are filed following a referral to the Judiciary Commission shall be matters of public record. Any hearing conducted pursuant to this Rule shall be open to the public. Any findings of fact, conclusions of law and report authored by a hearing officer pursuant to this Rule shall be matters of public record. Any recommendation or determination made by the Commission following a referral by the Office of the Judicial Administrator shall be a matter of public record.

**Section 6.**

Prior to the effective date of this Rule, the Office of the Judicial Administrator, Supreme Court of Louisiana, shall promulgate the forms required by this Rule.

**Section 7.**

The first reports due pursuant to Section 2 of this Rule shall be completed for calendar year 2008. The first reports due pursuant to Section 3 of this Rule shall be completed for calendar year 2009.

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This Rule shall become effective on January 1, 2009. However, Section 3 of this Rule shall become effective on January 1, 2010. Any reference to Section 3 as enacted by this Rule shall have no effect until Section 3 becomes effective.

New Orleans, Louisiana, this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

FOR THE COURT:

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Pascal F. Calogero, Jr., Chief Justice