



The Judiciary Commission of Louisiana

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OVERVIEW OF THE JUDICIARY COMMISSION OF LOUISIANA

The Judiciary Commission of Louisiana was created in 1968 by an amendment to the Louisiana Constitution of 1921 and continues in existence by Article 5, Section 25 of the 1974 Constitution. The members of the Judiciary Commission serve as an extension of the eyes and ears of the Justices of the Louisiana Supreme Court. They are the independent and preliminary “fact finders.” They conduct inquiries and investigations into alleged violations of the ethical rules for state judicial officers contained in [Article 5, Section 25](#) of the Constitution or the [Louisiana Code of Judicial Conduct](#) to determine whether to recommend to the Supreme Court that a judicial officer be publicly disciplined.

The Louisiana Supreme Court sets judicial policy and determines if a judicial officer has violated the Constitution or the Code and determines what, if any, discipline is administered. When considering the Judiciary Commission’s recommendation for the imposition of public discipline, the Louisiana Supreme Court receives and reviews the written report of the Judiciary Commission and the record of the proceedings before the Commission and listens to the oral arguments of the Office of Special Counsel and the attorney for the Respondent Judicial Officer prior to determining if public discipline is warranted. During the oral arguments, the justices have an opportunity to ask the attorneys clarifying questions. The justices do not see any witnesses, but they do review the transcribed testimony of the witnesses before the hearing officer and the Judiciary Commission. After oral argument, the justices deliberate on their findings and later publish an opinion.

Only the Supreme Court may discipline a judicial officer, but the Court may do so only on the basis of a recommendation from the Judiciary Commission. The Court is not bound by the Commission’s findings of fact, conclusions of law, or recommendation of discipline, and makes its own assessment of the evidence. Although the Judiciary Commission is a separate, constitutionally created body, it is still an integral part of the Supreme Court’s regulation of judicial conduct and discipline. Due to the separate but interrelated roles of the Judiciary Commission

and the Supreme Court in the judicial discipline process, the Judiciary Commission functions independently of, and does not communicate with, the Supreme Court about pending matters unless a recommendation of discipline is filed with the Court.

The members of the Commission and their staff do not make judicial policy decisions, nor do they adjudicate whether a judge should be publicly disciplined. The Commission conducts inquiries and investigations and produces records of those investigations, and then determines which of those records are appropriate for the Supreme Court to review in order to determine if misconduct occurred or permanent disability exists and then take appropriate action.

The Rules of the Supreme Court and the Rules of the Commission are designed to reduce conflicts of interest and maintain impartiality. The Commissioners and their staff are not authorized to do anything that may jeopardize the Commission's ability to function as a fair and impartial fact-finder. The members of the Commission and their staff function in a manner that has been described as similar to baseball umpires who call balls and strikes, without concern for the final score of a game, but who are very concerned with the way the game is played.

The members of the Commission are volunteers and serve on a part-time basis.

The Judiciary Commission shall consist of

- (1) one court of appeal judge and two district court judges selected by the Supreme Court;
- (2) two attorneys admitted to the practice of law for at least ten years and one attorney admitted to the practice of law for at least three years but not more than ten years, selected by the Conference of Court of Appeal Judges or its successor. They shall not be judges, active or retired, or public officials, other than notaries public; and
- (3) three citizens, not lawyers, judges active or retired, or public officials, selected by the Louisiana District Judges' Association or its successor.

[LSA-Const. Art. 5, § 25](#)

Full time staff is assigned to three different offices within the Commission, and perform different functions to assist the members of the Commission. The Office of Special Counsel conducts inquiries and investigations in order to seek evidence that is material and relevant to the assertions that a judicial officer has deviated from the prescribed standard of conduct. The Special Counsel is seeking evidence that proves

and also evidence that disproves the allegations. The Office of the Commission Counsel provides legal support to the Commission as it reviews the results of the OSC's inquiries and investigations to determine if an investigation or hearing is required and to determine the proper conduct of Commission Proceedings. A third part of the staff serves as counsel to the Hearing Officers who conduct fact-finding hearings on behalf of the Commission.

If a hearing is conducted and the Commission finds that a recommendation for public discipline is warranted, or finds a judicial officer is experiencing a likely permanent disability that seriously interferes with the performance of his duties, the Commission will produce a report of Procedural Facts, and the Material Facts regarding each issue presented, as well as Findings of Fact and Conclusions of Law, which are attached to the record of the Complaint, the Judicial Officer's Response, and the hearing before the hearing officer and the Commission for potential use by the Supreme Court.

Only certain types of people are the proper subjects of Commission proceedings. No institutions are subject to any Commission proceeding. The proper subject of a Commission proceeding is a person who occupies a judicial office that is authorized by the Constitution and Laws of Louisiana. That includes justices, judges, justices of the peace, court commissioners, magistrates, judicially appointed hearing officers, pro tempore and ad hoc judges, and individuals who preside over mayor's courts.

The subject matter of Commission proceedings consists of allegations of behavior that may violate the ethical rules contained in [Article 5, Section 25](#) of the Constitution, or may be permanently disabled as defined in that article, or may violate the ethical rules contained in the [Louisiana Code of Judicial Conduct](#). The standard of conduct is that which is prescribed in the Constitution or the [Louisiana Code of Judicial Conduct](#).

As mentioned above, the Office of Special Counsel conducts inquiries and investigations. The OSC also presents evidence and arguments to hearing officers and the Commissioners for their consideration and action. When the Commission recommends to the Supreme Court that a judicial officer be disciplined, the OSC also presents arguments on behalf of the Commission based on the record submitted to the Supreme Court for adjudication and the potential administration of discipline.

STAGE 1 – Screening Complaints:

The Commission generally receives Complaints from one of four sources:

1. Written Complaint from a Named Source
2. Anonymous Complaint
3. News Media Report
4. Commission's Own Motion

The Office of Special Counsel reviews each written complaint received from a named source. When evaluating a Complaint, the OSC assumes all facts alleged are true unless they are conclusory, contradictory, obviously unfounded or frivolous, or disproved by the attachments to the complaint. The OSC then answers the following question:

“Do the facts alleged implicate possible violation(s) of the Code of Judicial Conduct or Article V, Section 25(C) of the Louisiana Constitution?”

- If the answer is no, the complaint is screened out.
- If the answer is yes, a complaint file is opened, and a preliminary inquiry begins.

If the OSC receives a written anonymous complaint, and in the opinion of the OSC the anonymous complaint meets the standard for opening a file, the OSC will forward the complaint to the Commission Chair, who performs the same analysis using the standard described above. The Commission Chief Executive Officer performs the same function for news media reports of conduct which if true, implicate possible violations of the Code or Constitution.

During all Commission proceedings, the members and staff take care to preserve the impartiality of the proceedings. The focus of all Commission proceedings is the dispassionate search for and evaluation of evidence that supports or contradicts allegations of violations of the standard of conduct for judicial officers.

Stage 2: Special Counsel Preliminary Inquiries:

There are four elements to every Commission inquiry: (1) identifying the subject(s); (2) identifying the allegations of fact; (3) identifying the standard of conduct; (4) determining if the complaint, when assumed to be true, actually presents an allegation that the subject breached the standard of conduct. If the complaint does not contain sufficient specific facts to give rise to an issue of unethical conduct by the named judicial officer, the inquiry is concluded without the input of the subject.

If the complaint does contain sufficient specific facts to give rise to an issue of unethical conduct by the named judicial officer, the subject is provided a copy of the complaint and asked to respond.

Top Ten Issues in Open Complaints (in no particular order):

1. Bias and Prejudice
2. Temperament and Demeanor
3. Ex parte Communications
4. Recusal
5. Decisional Delay
6. Failure to Timely Perform Adjudicative Duties
7. Abuse of Contempt Power
8. Misuse of Court Resources
9. Failure to Follow the Law
10. Campaign Misconduct

After receiving and reviewing the response of the subject, the OSC prepares a “Post-Preliminary Inquiry Memo” for the Commission which:

- Summarizes the allegations of the complaint (complaint attached)
- Summarizes the Respondent’s response (response attached)
- Analyzes the ethical rules implicated and the factual issues that remain (if any)
- Makes a recommendation to the Commission for future action

After reviewing the OSC’s Post-Preliminary-Inquiry Memo, the Complaint, and the Subject’s Response, the Commission will either:

- 1) Close the complaint file,
- 2) Remind the subject of the appropriate standard of conduct,
- 3) Propose cautioning the subject that the Commission regarded the conduct in question as a deviation below the required standard but did not consider it to be serious enough to warrant further proceedings, and some mitigating factors are present (such as where the judge acknowledges the conduct was improper and has taken steps to prevent a recurrence or where the judge has little or no prior history before the Commission); and if the subject objects to the caution, close the matter or proceed to the next stage of the proceeding,
- 4) Propose admonishing the subject that the Commission regarded the conduct in question as either a clear deviation below the required standard, without mitigating factors present, but did not consider it to be serious enough to

warrant further proceedings; and if the subject objects to the admonishment, close the matter or proceed to the next stage of the proceeding,

- 5) Invite the subject to meet with the Commission to discuss the conduct in question, or
- 6) Authorize an investigation by the Office of Special Counsel.

Note: Any such caution or admonishment is not considered discipline, and are issued for educational purposes. Cautions or admonishments can only be issued if the judge consented to the caution or admonishment, or is deemed to have consented by not objecting within 14 days of receiving notice of this intended Stage 2 disposition. Additionally, admonishments may be publicly issued with the approval of the Supreme Court if a judge is not eligible to receive a confidential admonishment and consents to the public admonishment.

Stage 3: Commission Investigations:

During an investigation, the OSC actively searches for evidence in order to (1) identify the evidence that supports and the evidence that disproves each assertion of fact material to the Commission's evaluation of the complaint; and (2) determines if there exists clear and convincing evidence that the subject deviated from the standard of conduct. While conducting this search for evidence, the OSC will take sworn statements and collect physical evidence.

Once the OSC completes the investigation, it prepares a "Post-Investigation Memo." The Post-Investigation Memo contains:

- Everything in the Post-Preliminary-Inquiry Memo
- Summary of the Results of the Investigation
- Analysis of the Facts and the Law
- Recommendation to
 - Close, or
 - Remind, or
 - Caution, or
 - Admonish, or
 - Invite, or
 - File a Notice of Hearing

After reviewing the OSC's Post-Investigation Memo, the Complaint, and the Subject's Response, the Commission will either:

- 1) Close the complaint file,
- 2) Remind the subject of the appropriate standard of conduct,
- 3) Propose cautioning the subject that the Commission regarded the conduct in question as a deviation below the required standard but did not consider it to be serious enough to warrant further proceedings, and some mitigating factors are present (such as where the judge acknowledges the conduct was improper and has taken steps to prevent a recurrence or where the judge has little or no prior history before the Commission); and if the subject objects to the caution, close the matter or proceed to the next stage of the proceeding,
- 4) Propose admonishing the subject that the Commission regarded the conduct in question as either a clear deviation below the required standard, without mitigating factors present, but did not consider it to be serious enough to warrant further proceedings; and if the subject objects to the admonishment, close the matter or proceed to the next stage of the proceeding,¹
- 5) Invite the subject to meet with the Commission to discuss the conduct in question, or
- 6) Authorize the filing of a Notice of Hearing to initiate adversarial proceedings, to determine if the Commission should recommend to the Supreme Court that the subject be disciplined.

Stage 4: Adversarial Proceedings:

If the Commission files a Notice of Hearing, that notice will allege the particular behavior which the judicial officer performed which the Commission considers to be below the standard of conduct, and identify the specific source of the standard of conduct. The subject is served with that Notice of Hearing, and that initiates an **adversarial proceeding** between the Office of Special Counsel and the Respondent Judicial Officer. This proceeding is similar to most civil litigation. The principal difference is that these proceedings are confidential until the respondent judge either files an answer to the Notice of Hearing or the time for filing an answer has expired, at which point the proceeding becomes public.² These proceedings are not like criminal proceedings. Judicial Officers are treated like civil litigants and are identified as Respondent Judicial Officers. These Judicial Officers are simply responding to formal complaints. They are not defendants. They are presumed to

¹ Cautions or admonishments can only be issued if the judge consented to the caution or admonishment, or is deemed to have consented by not objecting within 14 days of receiving notice of this intended Stage 3 disposition. Additionally, admonishments may be publicly issued with the approval of the Supreme Court if a judge is not eligible to receive a confidential admonishment and consents to the public admonishment.

² Commission proceedings prior to this point are confidential.

be free of wrongdoing, and have a right to review the evidence, confront the witnesses and present evidence which supports their contentions.

The Adversarial Proceeding Stage of the Commission Proceedings includes the following:

- Commission appoints a Hearing Officer
- Reciprocal Discovery
- Motion Practice
- Hearing before a Hearing Officer
- Clear and Convincing Standard of Proof

Hearing before Hearing Officer:

The Hearing Officer conducts a fact-finding hearing and receives evidence presented by the OSC and the Respondent Judicial Officer, who may each call witnesses to testify and introduce exhibits and other evidence relating to the allegations in the Notice of Hearing. After the hearing, the Hearing Officer makes Proposed Findings of Fact and Conclusions of Law and submits a record of the proceedings before the Hearing Officer to the Commission. The Commission is not bound by the Hearing Officer's proposed findings and conclusions and makes its own assessment of the evidence. The Hearing Officer does not make any recommendation regarding discipline. Only the Commission does that. The Office of Commission Counsel transmits the record of the inquiry, investigation, and hearing before the hearing officer to the Commission members, and may prepare a Post-Hearing Memo, which reports an analysis of the record and recommendations. The Commission reviews that record and may schedule a hearing before the Commission to assist the Commission in evaluating the evidence and deciding whether to make a recommendation of discipline to the Louisiana Supreme Court.

Evidence relating to the allegations in the Notice of Hearing may also be presented to the Commission by stipulation. If the stipulations address all factual allegations in the Notice of Hearing and are approved by the Commission, there is no hearing before a hearing officer. If the stipulations address some but not all of the factual allegations in the Notice of Hearing, the stipulations need not be approved by the hearing officer or the Commission, and a hearing will be held before a hearing officer as to the remaining issues.

Commission Hearing:

During this hearing:

- Commission may subpoena Respondent and any witnesses who testified before the Hearing Officer
- Commission Members examine the witnesses
- Respondent and the OSC may examine any witness called and examined by the Commission. After the examination is completed, Respondent may personally address the Commission.
- The OSC and the Respondent present their arguments to the Commission.
- Commission deliberates in closed session

The Commission and Respondent may contract a Deferred Recommendation of Discipline Agreement (DRDA), which has the following features:

- Commission agrees not to make a recommendation of discipline to the Louisiana Supreme Court if the Respondent complies with the terms and conditions of the DRDA
- Respondent agrees to several things
 - Admits he/she violated the ethical rules at issue
 - Agrees to an admonishment by the Commission for the violative conduct
 - Agrees to stop the violative conduct
 - Agrees to other conditions as established by the Commission related to misconduct; for example,
 - temperament and demeanor problem might call for anger management or sensitivity training
 - DRDA time duration (usually three years)
 - Default provisions
- DRDAs entered into after May 1, 2020, are public record

If the Commission and Respondent do not contract a DRDA:

The Commission May Publicly

- Close
- Remind
- Caution
- Admonish

The Commission may consider cautions or admonishments, which were not consented to, in subsequent proceedings, when those cautions or admonishments were issued (1) after a formal hearing, (2) a Deferred Recommendation of Discipline Agreement (DRDA), or (3) after the dispensation of a hearing before a hearing officer pursuant to Section 29(g) and (h) (i.e., stipulations).

If the Commission does not resolve the matter at this stage, it may make a recommendation of discipline to the Louisiana Supreme Court.

Stage 5: Proceedings before the Supreme Court:

During the proceedings before the Louisiana Supreme Court

- Office of the Commission Counsel files the recommendation of discipline with the Court, along with the record, which includes:
 - The transcripts of the hearing before the hearing officer and any exhibits introduced at the hearing, or
 - The stipulations of the parties, if the evidence was presented by stipulation without a hearing, and
 - Any transcripts of the hearing before the Commission
- OSC represents the Commission before the Court
- Most Respondent Judicial Officers are represented by attorneys but this is not required
- Within ten days either party may file an application for permission to file additional evidence (S. Ct. R. 23, Section 13).
- Court places case on summary docket and schedules oral argument (R. 23, § 14)
- OSC files an initial brief in support of the Commission's findings of fact, conclusions of law, and recommendation for discipline (by date set by Clerk's Office, but in no case later than 21 calendar days before the date fixed for argument)
- Respondent's brief is due at least 7 calendar days before argument (R. 23, § 14)
- There may be some limited motion practice, for example, a request for permission to exceed the maximum page limit if the case is complex, or a motion to strike the other party's brief, etc.
- Oral argument

- There is also the possibility of applications for rehearing after the Court issues its opinion

The Supreme Court's opinion provides one of the following determinations:

- No Misconduct (the behavior occurred and it was not misconduct)
- Misconduct not proven by clear and convincing evidence
- Misconduct, but does not warrant discipline
- Public Censure
- Suspension (with or without pay and with or without conditions)
- Removal

The Court also determines who is responsible for payment of Costs.

Accountability to the Public:

One of the measures of the legitimacy of a government is the allegiance, support and participation of the governed. In 1972, the voters elected a diverse group of citizens to serve as delegates to a constitutional convention for the purpose of framing a new constitution for the state of Louisiana. The convention was convened in 1972, and the voters adopted the product of the convention in 1974.

Article Five of the 1974 Constitution of the State of Louisiana provides the Supreme Court general supervisory jurisdiction over all other courts and exclusive original jurisdiction of disciplinary proceedings against a member of the bar ([LSA-Const. Art. 5, § 5](#)) and against state judicial officers ([Art. 5, § 25](#)). Article 5, Section 25 provides for the Louisiana Judiciary Commission which is composed of:

- Three citizens who are neither attorneys nor public officials,
- Three attorneys who are neither judges nor public officials; two must have more than 10 years of experience; the third must have at least three years of experience and not more than 10 years of experience, and
- Three attorneys who are also judges; two must serve on district courts; the third must serve on an appellate court

The citizens of Louisiana have recognized that the members of the legal professions, both lawyers and judges, 1) each possess a specialized and unique body of knowledge, and 2) are considered to be significant because they both owe a duty to the society beyond the mere exercise of skill and diligence. The voters of this state

have authorized the members of the legal profession to govern themselves. The members of the legal profession are allowed to set the standards for admission to, and expulsion from the professions. This relationship between the society and the professional is significant because it includes trust and responsibility. Society expects that the members of these professions will exercise their right to practice their profession with a certain amount of selflessness.

The voters who approved the 1974 Constitution provided the Justices of the Supreme Court the authority to regulate the practice of law and the administration of justice in our state. The voters also provided for a Judiciary Commission to assist the justices with the collection of evidence that both supports and contradicts allegations of judicial conduct and capacity that falls below the standard of conduct and capacity required of judicial officers. As the Court determines if, when, and what judicial discipline is required, the service of the citizen members (who are neither attorneys nor public officials), the attorney members (who are neither judges nor public officials) and the judge members of the Commission -- serving as extensions of the Justices of the Louisiana Supreme Court's eyes and ears -- provides the Court a unique capability to both gather and transmit information relating to the Court's duty to oversee the administration of justice throughout the state.

The voters of our state have developed a sensitive system which provides separate but interrelated roles for the Judiciary Commission and the Supreme Court in the judicial discipline process. The Judiciary Commission functions independently of, and does not communicate with, the Supreme Court about pending matters unless a recommendation of discipline is filed with the Court. This process of confidentially conducting inquiries and investigations and providing public hearings for validated allegations of misconduct, and public censure, suspension and removal after misconduct or incapacity is proven serves to preserve the public's respect for our system of administering justice and the honor of our public servants while protecting the public from officials who fail to uphold the high standards that the public has set for them.

Approved by the Commission during its meeting September 23, 2016, and revised August 21, 2020.

NOTE: To the extent that anything within this Overview Summary conflicts with Louisiana Supreme Court Rule XXIII, Rule XXIII shall be controlling. Similarly, to the extent that anything within this Overview Summary conflicts with the Rules of the Judiciary Commission, the Rules of the Judiciary Commission shall be controlling.