

Supreme Court of Louisiana

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NEWS RELEASE #005

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **27th day of January, 2021** are as follows:

BY Crain, J.:

2020-O-00747

IN RE: F. STANTON HARDEE, III

SANCTIONS IMPOSED. SEE OPINION.

Lombard, J., assigned as Justice ad hoc, sitting for Retired Chief Justice Johnson, for oral argument. He now sits as Justice ad hoc for Justice Piper Griffin at the time this opinion is rendered.

Weimer, C.J., concurs in part, dissents in part, and assigns reasons.

Crichton, J., concurs and assigns reasons.

McCallum, J., concurs in part and dissents in part for the reasons assigned by Chief Justice Weimer.

SUPREME COURT OF LOUISIANA

NO. 2020-O-00747

IN RE: F. STANTON HARDEE, III

Judiciary Commission of Louisiana

CRAIN, J.*

This matter is before the court on the recommendation of the Judiciary Commission of Louisiana. We adopt the Commission's recommendation, except for the length of monitoring by the Judges and Lawyers Assistance Program (JLAP). We require Judge Hardee to successfully complete the five-year JLAP monitoring agreement executed on December 5, 2017.

FACTS AND PROCEDURAL HISTORY

Judge F. Stanton Hardee, III was elected judge for the Kaplan City Court in Vermillion Parish and took office in 2015. He was recently reelected without opposition to a new six-year term. Other than the six months his law license was suspended for the subject incident, he has served continuously since 2015.

In January 2017, Judge Hardee attended a bachelor party in Park City, Utah celebrating his upcoming wedding. He visited a local bar and consumed excessive amounts of alcohol, becoming extremely intoxicated. It is undisputed that he grabbed the buttocks of a waitress without her consent, Park City Police were called, he did not immediately produce identification, and he failed to cooperate with police at the scene.

Judge Hardee was charged with the following crimes, all misdemeanors under Utah law: (1) Sexual Battery, in violation of U.C.A. 76-9-702.1; (2) Failure to

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Disclose Identity, in violation of U.C.A. 76-8-301.5; (3) Interference with Arresting Officer, in violation of U.C.A. 76-8-305; and (4) Intoxication, in violation of U.C.A. 76-9-701. He pled no contest to these charges and has fully satisfied all terms and conditions of the plea.

As a part-time city court judge, Judge Hardee is allowed to practice law. Consequently, he is subject to the jurisdiction of the Office of Disciplinary Counsel (ODC), which regulates attorneys. In November 2018, a joint petition for consent discipline was filed by Judge Hardee and the ODC. The court approved the requested consent discipline, which included a five-year JLAP monitoring agreement that began December 5, 2017.¹ *See In re: Hardee*, 18-1555 (La. 11/14/18), 259 So.3d 329. The consent discipline resulted in Judge Hardee being suspended from the practice of law for one year with all but six months deferred, followed by probation coinciding with the remainder of his JLAP monitoring agreement. If successfully completed, JLAP monitoring will end on December 5, 2022.

On February 1, 2019, after this court approved the joint petition for consent discipline, the Judiciary Commission filed formal charges against Judge Hardee. Judge Calvin Johnson was appointed hearing officer to conduct the proceedings. A “Statement of Stipulated Uncontested Material Facts and Stipulated Conclusions of Law” was then filed in which Judge Hardee stipulated to his criminal conduct in Utah and acknowledged violating Canons 1 and 2A of the Code of Judicial Conduct.

After Judge Johnson conducted a hearing on the charges, Judge Hardee was ordered to appear and testify before the Commission. The Commission found the allegations of misconduct proven by clear and convincing evidence. The

¹ JLAP recommends five-year monitoring because studies show long-term structured recovery and formal monitoring for five years greatly increases the odds of avoiding substance abuse relapse.

Commission then filed findings of fact, conclusions of law, and its recommendation of discipline in this court. The recommendation is Judge Hardee be suspended from judicial office for two years with all but six months deferred, retroactive to the date of his suspension as an attorney. In addition, Judge Hardee would be subject to a period of JLAP monitoring until December 31, 2026, the end of his new term in office, and ordered to pay \$2,025.32 incurred to investigate and prosecute this case.

DISCUSSION

Because the facts and legal conclusions are stipulated, the sole issue presented is the appropriate judicial discipline. *In re: Shea*, 02-0643 (La. 4/26/02), 815 So.2d 813, 816. The only issues not stipulated are the role, if any, of a substance abuse disorder in Judge Hardee's conduct and the need for additional JLAP monitoring.

Judge Hardee disputes his diagnosis and the need for additional monitoring. He has executed a five-year JLAP monitoring agreement and, assuming he remains compliant, monitoring will end on December 5, 2022. Nevertheless, the Commission, which did not act on this matter until after the ODC and Judge Hardee agreed to attorney discipline, now recommends extending monitoring through December 31, 2026. We reject that recommendation.

In arriving at appropriate discipline, we are guided by the following factors set forth in *In re: Chaisson*, 549 So.2d 259, 266 (La. 1989): (a) whether the misconduct is an isolated instance or evidences a pattern of conduct; (b) the nature, extent, and frequency of occurrence of the acts of misconduct; (c) whether the misconduct occurred in or out of the courtroom; (d) whether the misconduct occurred in the judge's official capacity or in his private life; (e) whether the judge has acknowledged or recognized that the acts occurred; (f) whether the judge has evidenced an effort to change or modify his conduct; (g) the length of service on the bench; (h) whether there have been prior complaints about this judge; (i) the effect

the misconduct has upon the integrity of and respect for the judiciary; and (j) the extent to which the judge exploited his position to satisfy his personal desires.

Applying these factors, Judge Hardee's criminal conduct in Utah was a single incident. While he has two prior alcohol-related arrests from 1999 and 2001, those occurred before Judge Hardee became an attorney and were disclosed to gain admission to the bar. Sixteen years then passed before his Utah arrest. Although certainly concerning, the passage of time suggests no significant connection between the prior behavior and the Utah incident.

Judge Hardee's misconduct occurred in his private life, not his courtroom.

Judge Hardee did not self-report his Utah arrest. However, after being informed of inquiries, he cooperated with the Commission. He stipulated to his criminal conduct and to violating Canons 1 and 2A of the Code of Judicial Conduct. He publically apologized for his behavior and has stated he is remorseful for the embarrassment his actions caused the judiciary and the legal profession. He entered a five-year monitoring agreement with JLAP and has complied with all requirements of this program. He also consented to discipline with the ODC, including suspension from the practice of law for six months and removal from the bench without pay for six months.

Judge Hardee has served as Kaplan City Court judge continuously since 2015, except for the six months his law license was suspended. Any inexperience as a judge played no role in his criminal conduct.

Judge Hardee has no previous disciplinary record for judicial misconduct.

Judge Hardee's actions harmed the integrity of the judiciary. He admitted to drunkenly groping a woman and refused to cooperate with police. His conduct was

reported by the local media in his judicial jurisdiction and damaged public respect for the judiciary.

Judge Hardee did not exploit his position to satisfy his personal desires.

In addition to these factors, we also consider the following evidence. The JLAP clinical director recommends Judge Hardee continue his current monitoring program and certified he is compliant with his JLAP monitoring agreement. He has also been evaluated at two medical facilities, The Professionals Wellness Evaluation Center and RiverMend Health/Positive Sobriety Institute of Chicago. Professionals recommends Judge Hardee continue his current monitoring agreement, while RiverMend recommends extending the monitoring period.

RiverMend evaluated Judge Hardee in September 2017 and recommended career-long monitoring. Nevertheless, in November 2018 this court imposed five years of monitoring as part of its order disciplining Judge Hardee as an attorney. He was later evaluated by Professionals, which found the current five-year monitoring period sufficient and did not recommend additional monitoring. Other than Judge Hardee disputing his substance abuse diagnosis in these proceedings, the record contains no change in circumstances to support an extension of the monitoring period. It is significant that Judge Hardee has been fully compliant with the JLAP monitoring agreement entered December 5, 2017. Under these circumstances, we decline to extend monitoring.

Judge Hardee argues the doctrine of *res judicata* should estop the Commission from imposing additional discipline because this court already imposed attorney discipline. As a judge and a practicing attorney, Judge Hardee is subject to the jurisdiction of both the ODC and the Judiciary Commission. Louisiana Supreme Court Rule XXIII, § 25 expressly provides that a judge who can legally engage in the practice of law “is subject to the judicial disciplinary proceedings of the

Commission for conduct arising from or performed in his or her capacity as an attorney. Action against such a judge by the Commission shall not preclude disciplinary action against him or her by the appropriate authority concerning his or her license to practice law.” In recognition of this dual jurisdiction, Supreme Court Rule XXIII, § 25 provides “where dual jurisdiction exists the Commission may communicate with the Office of Disciplinary Counsel to coordinate the handling of a matter.” While under the circumstances of this case we find it appropriate that the probation period for judicial discipline be co-extensive with that for Judge Hardee’s attorney discipline, we emphasize this is not required. We can impose additional discipline. In fact, in the event Judge Hardee violates the terms of his probation, he will be suspended for two years as a judge as opposed to one year as an attorney. However, we find the length of probation and JLAP monitoring imposed for attorney discipline and the fact that Judge Hardee has remained compliant with all terms of that discipline does not warrant either extension of the probation period or additional monitoring. Nevertheless, we feel constrained to express Judge Hardee’s argument for the application of *res judicata* has no merit.

Judge Hardee’s criminal acts in this case are more serious because he is a judge. The fact that he broke the law erodes the integrity of the judiciary and the public’s confidence in it. His conduct was clearly prejudicial to the administration of justice and has brought disrepute upon his judicial office. *See In re Whitaker*, 463 So.2d 1291, 1303 (La. 1985). In fact, it is perplexing why the Judiciary Commission did not act initially against Judge Hardee, allowing the attorney discipline to occur first. Judge Hardee is reminded that he is held to a higher standard of personal conduct as a judge as compared to an attorney.

DECREE

Judge F. Stanton Hardee, III violated Canons 1 and 2A of the Code of Judicial Conduct. It is ordered that Judge Hardee be and he is suspended from judicial office for two years without pay with all but six months deferred, retroactive to November 14, 2018, the date of his suspension as an attorney. His suspension is subject to successful completion of the five-year JLAP monitoring agreement executed December 5, 2017. Judge Hardee is further ordered to pay the Judiciary Commission of Louisiana \$2,025.32 for costs.

SUPREME COURT OF LOUISIANA

No. 2020-C-00747

IN RE: JUDGE F. STANTON HARDEE III

Judiciary Commission of Louisiana

WEIMER, C.J., concurring in part and dissenting in part.

I respectfully concur in the majority's finding that the respondent be "suspended from judicial office for two years without pay with all but six months deferred, retroactive to November 14, 2018, the date of his suspension as an attorney"; however, for the following reasons, I dissent from the majority's holding that the respondent's "suspension [be simply] subject to successful completion of the five-year [Judges and Lawyers Assistance Program (JLAP)] monitoring agreement executed on December 5, 2017." **In re: F. Stanton Hardee, III**, 20-0747 (La. 1/__/21), slip op., pp. 6-7.

At the respondent's request, RiverMend Health/Positive Sobriety Institute of Chicago performed an evaluation of the respondent and recommended career-long monitoring by JLAP. Apparently, the respondent was dissatisfied with that opinion and sought a second evaluation by Professionals Wellness Evaluation Center. The respondent uses Professionals' recommendation as a basis for his argument that completion of the current five-year JLAP monitoring agreement entered by consent in the Office of Disciplinary Counsel proceeding that runs through December 5, 2022, is an appropriate judicial discipline.

Expert medical evaluators, all chosen by respondent, have diagnosed the respondent with some form of substance abuse disorder. The respondent's denial of those diagnoses through lay testimony and his own belief that he does not meet the diagnostic criteria for a substance abuse disorder is meritless.

While I commend the respondent for the strides he has made, I agree with the Judiciary Commission's recommendation that the respondent be subjected to an extended period of JLAP monitoring. Accordingly, I would require the respondent to execute a new five-year agreement with JLAP. Accordingly, I respectfully concur in part and dissent in part.

01/27/2021

SUPREME COURT OF LOUISIANA

No. 2020-O-00747

IN RE: F. STANTON HARDEE, III

JUDICIARY COMMISSION OF LOUISIANA

Crichton, J., concurs and assigns reasons:

I concur with the majority. “The primary purpose of the Code of Judicial Conduct is to protect the public rather than discipline judges.” *In re Cannizzaro*, 2005-0524 (La. 5/6/05), 901 So. 2d 1035, 1038; *see also In re: Harris*, 98-0570 (La.7/8/98), 713 So.2d 1138. It is noteworthy that Judge Hardee was re-elected without opposition to an additional term beginning January 1, 2021. Importantly, this re-election occurred after media coverage of his 2017 arrest and the Office of Disciplinary Counsel proceedings that ultimately culminated in Judge Hardee’s suspension and probation by this Court. *In re: Hardee*, 18-1555 (La. 11/14/18), 259 So. 3d 329. In light of the record and the public’s thus expressed confidence in Judge Hardee’s service, I agree that the suspension and probation imposed by the majority is appropriate.

01/27/2021

SUPREME COURT OF LOUISIANA

NO. 2020-O-00747

IN RE: JUDGE F. STANTON HARDEE, III

Judiciary Commission of Louisiana

MCCALLUM, J., concurs in part, dissents in part for the reasons assigned
by Weimer, C.J.