

# Supreme Court of Louisiana

FOR IMMEDIATE NEWS RELEASE

NEWS RELEASE #013

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the 25th day of March, 2022 are as follows:

**BY Weimer, C.J.:**

2021-O-01801

IN RE: JUDGE JERRY L. DENTON, JR.

**SUSPENSION IMPOSED. SEE OPINION**

Crichton, J., dissents and assigns reasons.

Genovese, J., dissents and assigns reasons.

McCallum, J., dissents and assigns reasons

**SUPREME COURT OF LOUISIANA****No. 2021-O-01801****IN RE: JUDGE JERRY L. DENTON, JR.***Judiciary Commission of Louisiana***WEIMER, C.J.**

This matter arises from a recommendation of the Judiciary Commission of Louisiana (“the Commission”), pursuant to La. Const. art. V, § 25(C) (1974), to discipline Judge Jerry L. Denton, Jr., City Court Judge of Denham Springs, Louisiana.<sup>1</sup> For the reasons discussed below, we find that Judge Denton violated Canons 1, 2A, 3A(6), and specified portions of 3A(4) and 3C of the Louisiana Code of Judicial Conduct (1996), and specified portions of La. Const. art. V, § 25(C)(1974). We find a suspension from office without pay for four months and payment of costs incurred by the Commission in the sum of \$4,676.25 is an appropriate sanction.

**PROCEDURAL HISTORY**

A complaint against Judge Denton was filed by Maria Finley, attorney at law, and received by the Office of Special Counsel (the “OSC”). Ms. Finley was retained by Stephanie Bardeau-Marse to file a petition to intervene in a Child in Need of Care proceeding (“CINC proceeding”) in which Judge Denton presided. While the case was pending before Judge Denton, he responded and initiated improper *ex parte* communications with Ms. Bardeau-Marse. These improper *ex parte* communications precipitated other misconduct, which led to the complaint, a Notice of Hearing from the OSC to Judge Denton,<sup>2</sup> and an investigation by OSC. The OSC

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<sup>1</sup> Judge Denton was first elected in 2016. He assumed office on January 1, 2017, and he was re-elected in 2020.

<sup>2</sup> The Notice of Hearing alleged that Judge Denton:  
(1) violated Canons 1, 2A, 3A(4), 3A(6), and 3C of the Code of Judicial Conduct (1996); and/or

and Judge Denton entered into a “Statement of Stipulated Uncontested Material Facts, Stipulated Conclusions of Law, and Stipulated Recommendation of Discipline” (“the Stipulation”).<sup>3</sup> The matter was submitted to the Commission. On June 28, 2021, the Commission dispensed with convening a hearing before a hearing officer and accepted the stipulations and exhibits submitted in support, reserving the right to make further findings of fact and conclusions of law based upon Judge Denton’s appearance before the Commission, the briefs of the parties, and the entire case record.

On August 20, 2021, Judge Denton appeared before the Commission and testified. In addition, the parties introduced exhibits, including the sworn statements of Judge Denton, Ms. Bardeau-Marse, and Ms. Finley. Following the hearing, the Commission issued “Judiciary Commission’s Finding of Fact, Conclusions of Law, and Recommendation of Discipline” (“the Recommendation”). The Commission determined that Judge Denton violated Canons 1, 2A, 3A(4), 3A(6) and 3C of the Louisiana Code of Judicial Conduct (1996), and La. Const. art. V, § 25(C) (1974) (“willful misconduct relating to his official duty,” and “persistent and public conduct prejudicial to the administration of justice that brings the judicial office into disrepute”). As a sanction for the violations, the Commission recommended a six-month suspension from office, without pay, and payment of costs in the amount of \$4,676.25.

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- (2) engaged in willful misconduct relating to [his] official duty, in violation of Louisiana Constitution, [A]rticle V, § 25(C)(1974); and/or
  - (3) engaged in persistent and public conduct prejudicial to the administration of justice that brings the judicial office into disrepute, in violation of Louisiana Constitution, [A]rticle V, § 25(C)(1974).

<sup>3</sup> The Stipulation was signed by Judge Denton, Judge Denton’s counsel, and the attorney for the OSC.

The Commission filed the recommendation with this Court on December 3, 2021. The matter was set on the docket for oral argument pursuant to Louisiana Supreme Court Rule XXIII, § 14, and oral arguments were heard.

### **CINC PROCEEDING**

The CINC proceeding<sup>4</sup> over which Judge Denton presided concerned the mother, J.C., and the father, A.D., who are the unmarried biological parents of two children, E.C. and P.C. The mother had a history of substance abuse and mental health issues. The father was not involved in the children's lives for the first several years after they were born. As a result, both children were primarily cared for by their maternal grandmother, Ms. Bardeau-Marse.

In September 2017, the Department of Children and Family Services ("DCFS") received a report of erratic behavior and suspected drug use by the mother in the presence of P.C. DCFS filed a request with the Denham Springs City Court for an instanter order, which Judge Denton granted, placing E.C. and P.C. in the temporary custody of DCFS. In October 2017, the State filed a petition to adjudicate the children in need of care. *State in the Interest of E.C. and P.C.*, No. 11998, on the docket of the Denham Springs City Court.

In December 2017, Ms. Bardeau-Marse filed in the Denham Springs City Court a petition that sought to intervene in the CINC proceeding and requested custody of E.C. and P.C. On January 11, 2018, Judge Denton denied the petition. Following a dispositional hearing on the custody issue, Judge Denton granted custody of the children to the father with monitoring by DCFS; ordered visitation for the mother and the grandparents to be facilitated by a relative; and, set a case review hearing for April 12, 2018.

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<sup>4</sup> The initials of the parents and children will be used to protect and maintain the privacy of the minor children involved in this proceeding.

## STIPULATIONS OF FACT AND CONCLUSIONS OF LAW

On March 18, 2018, approximately three weeks before the case review hearing, Ms. Bardeau-Marse sent a private message to Judge Denton through Facebook Instant Messenger (“Messenger”). Ms. Bardeau-Marse mentioned a “small circle of friends that we share and both consider friends. . . . I’m begging for someone to listen to me . . . since my attorney was pretty much thrown out of the courtroom and my pleading petition was not heard. . . . I’m asking to please let me have a heart to heart conversation with you, again on a personal level, I want to explain my situation/self how those babies are loved how they are our heart . . . .” Ms. Bardeau-Marse also said that “anyone who knows me and my family know[s] what kind of people we are and how we live . . . including Ex-mayor Jimmy Durbin. . . . May I please have an hour of your private time at your convenience on that personal level?”

Judge Denton did not know Ms. Bardeau-Marse and did not respond to her March 18, 2018 message. However, he testified in his sworn statement that “when she mentioned Jimmy Durbin, well, certainly . . . . I would take a call from someone that Jimmy told to . . . or take a text message or communication from Jimmy, saying to call because, obviously, if he thought enough that they should call me, I feel close enough to Jimmy that he would only have my best interest and it was something he thought I should do or someone I should speak to. And by her using Jimmy Durbin, that was a connection.”

The case review hearing in the CINC proceeding was conducted on April 12, 2018. At the outset, Judge Denton heard Ms. Bardeau-Marse’s second petition that sought to intervene and wherein she requested custody of E.C. and P.C.; Judge Denton denied the petition. Judge Denton then granted sole custody of the children to the father, with supervised visitation to the mother, and DCFS closed its file. Judge Denton’s order provided no specific visitation rights for Ms. Bardeau-Marse.

At the urging of the attorneys for the children and DCFS, Judge Denton retained jurisdiction over the case. *See* La. Ch.C. art. 309(A)(1).<sup>5</sup>

Later that same day, Judge Denton received a message reflecting that Ms. Bardeau-Marse “added” him on Messenger. At 7:49 p.m. on April 12, 2018, Judge Denton’s Messenger call log reflected that he called Ms. Bardeau-Marse and that the call lasted for 100 minutes. In Ms. Bardeau-Marse’s sworn statement, she stated that Judge Denton gave her the name and number of a private investigator and told her he would keep his eyes on the father.

Judge Denton continued engaging in frequent *ex parte* communications with Ms. Bardeau-Marse by Messenger for a total of six months (March 2018 to August 2018).

On April 30, 2018, at 6:05 a.m., Ms. Bardeau-Marse sent a message to Judge Denton in which she again discussed her difficulty in being able to see her grandchildren. Judge Denton replied at 6:32 a.m.: “I am so sorry for your continued pain. I don’t have the answer, but I am working on the entire situation. I assure you because I am not happy with the current exigencies as currently exist. Keep praying and I will do the same.”

At 11:43 p.m., on May 11, 2018, Mother’s Day weekend, Ms. Bardeau-Marse sent Judge Denton a lengthy message about her grandchildren, her daughter, and their conflict with the father over visitation/custody, the father’s alleged drinking and drug abuse, and his alleged mental and emotional abuse of the mother and her side of the family. Judge Denton responded with a “thumbs-up” emoji. Ms. Bardeau-Marse sent a second message at 11:53 p.m. with additional details and asking, “[What can [she] do[?]” At 11:55 p.m., she wrote: “I didn’t realize you were

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<sup>5</sup> La. Ch.C. art. 309(A)(1) provides in part: “Except as provided in Article 313, a court exercising juvenile jurisdiction shall have continuing jurisdiction over the following proceedings and the exclusive authority to modify any custody determination rendered, including the consideration of visitation rights: (1) Child in need of care proceedings pursuant to Title VI.”

active . . . do you sleep lol . . . I hardly ever . . . the older I get the less sleep . . . .”

Early the next morning, May 12, 2018, at 5:30 a.m., Judge Denton messaged Ms. Bardeau-Marse: “Sleep is difficult when you care. And I do care and I worry and I am going to catch him when he messes up and he will and justice will prevail. But I have to work within the constraints of the law. You continue to pray and be patient and remember right win[s] in the end.”

On May 23, 2018, Judge Denton messaged Ms. Bardeau-Marse at 8:40 a.m.: “I can issue a special order for this one occasion if you would like.” In his sworn statement, Judge Denton admitted that the special order he was proposing to issue was for extra visitation for Ms. Bardeau-Marse to possibly take E.C. and P.C. to Disney World. At 8:49 a.m., Ms. Bardeau-Marse responded: “I have been blessed by you as my friend. . . . I don’t want them to know we have been communicating.” At 8:58 a.m., she messaged: “Now I am worried how we are going to get around this. I personally think you have a leak in your office direct to this attorney. Weird how things have happened. My heart is pounding with excitement, however!” At 9:10 a.m., Judge Denton called Ms. Bardeau-Marse and talked to her for five minutes.

Subsequently, Judge Denton (either directly or through his clerk) contacted the father’s attorney, Rebecca Lee, about the plan to give Ms. Bardeau-Marse extra visitation. Ms. Lee strongly opposed this plan.

On May 24, 2018, Ms. Bardeau-Marse sent Judge Denton two messages, inquiring whether the special order was granted. At 7:16 p.m., Judge Denton responded to Ms. Bardeau-Marse: “I am having issues with the state and it’s [] more difficult because of his attorney fighting us badly.” At 9:14 p.m., Ms. Bardeau-Marse expressed her confusion and frustration, messaging: “Him or the states attorney? Rebecca Lee . . . [s]he’s dismissed . . . so he’s not paying for an attorney[;] he’s using the free service of the state . . . how does the state’s attorneys have control

over the kids while he has the full custody/power of them . . . I'm very confused, how can that be? . . . Seriously Judge I'm totally confused as to what is going on. Is there something I'm missing? Please tell me . . . what I have to do to get my rights as a grandparent . . . what do you suggest I do?" At 10:36 p.m., Judge Denton replied: "This is a very very difficult case and I [am] consulting with some other family court judges<sup>[6]</sup> to try and come up with some resolve [sic] to get you all some rights without having to hire lawyers [to] [f]ight in court etc. but it is just [n]o[t] an easy task to fix. It is complex[,] and the law is not always favorable. But you mustn't give up or cause yourself to have a mental collapse because that won't help our position. You have to stay strong for the children." No special order was issued.

On June 5, 2018, at 11:17 p.m., Ms. Bardeau-Marse messaged Judge Denton, in part: "Hi Judge, Hope all is well . . . I was just checking in to see if you were able to gather any helpful information. . . . I am very impatient, and we are loosing [sic] precious time with our babies . . . ." Judge Denton responded to this message with a "thumbs-up" emoji.

On June 23, 2018, at 10:14 p.m., Ms. Bardeau-Marse wrote: "Hi Judge hope all is fine . . . . I am still waiting patiently as I haven't heard anything . . . . please I'm begging for help . . . guidance something for the concern of the babies. . . . I truly worry these babies are not in a good place . . . again please hear my cry for help . . . this situation is horrible. I know the power you have over this situation . . . please again help me/us get our rights back to those babies . . . please I beg[,] hear my cry." She ended this message with a "prayer hands" emoji followed by two "sad face" emojis.

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<sup>6</sup> In Judge Denton's sworn statement, he identified retired Judge Anthony Graphia as one of the judges with whom he discussed Ms. Bardeau-Marse's case, and explained that in his conversation with Judge Graphia, he presented the question as a hypothetical.



A few days later on June 27, 2018, at 5:29 a.m., Ms. Bardeau-Marse messaged what she said would be “my last text. I apologize for pouring my feelings out to you. I love those babies more than anything. I feel like I have lost. . . . Not to mention my last few text, you have not responded . . . . if I may ask one more thing, please don’t let them lie in your courtroom anymore, hear all sides, allow the other family members to speak, there are three sides to every story. Please, don’t let them control you as a person, use your power . . . Again, I appreciate your communication with me . . . Forever, my friend.” Thirty minutes later, Judge Denton responded: “I never give up and I never stop thinking. I have to navigate a system fraught with failure. I don’t think you are crazy. Far from it. You must have faith. Right wins in the end. Sometimes justice just takes a little longer.” At 11:55 a.m., Ms. Bardeau-Marse replied: “Thank you so much . . . for putting the positive thoughts once again.”

Two weeks later, on July 12, 2018, at 7:15 p.m., Ms. Bardeau-Marse messaged: “Hi, Judge, hope all is well . . . well thought I’d share the latest, Mr. Daddy of the year has pushed buttons again . . . he tells [J.C.] that he has spoken to you . . . yes . . . . and you have assured him that [J.C.] nor we will ever get those babies, that you told him you have so much on her to not worry about anything. . . . I don’t believe this to be true.” Judge Denton responded at 8:13 p.m.: “[A.D.] is a liar if he said he spoke to me that did not, would not occur. I need to do some thinking and some praying. I will be in touch.” At 8:16 p.m., Judge Denton messaged: “Before this is going to go on much longer [,] we will be back [i]n court [I] am almost sure of it.”

The following day, July 13, 2018, at 5:33 p.m., Ms. Bardeau-Marse messaged: “[J.C.] received this letter today . . . does this mean [A.D.] has full custody now? And the case is over? The letter is incorrect . . . these kids were NEVER neglected or abused NEVER . . . .” At 6:31 p.m., Judge Denton advised her: “No it does not necessarily mean that it’s over. . . . I do strenuously suggest you go hire the best

lawyer you can afford[,] get legal advice and go to court where jurisdiction over custody can be fought over. I wish I could do more but I have a court of limited jurisdiction.” A few minutes later Judge Denton messaged: “I wish I could do more to help[.] But as it currently sits my hands are tied. I wish you the very best! I will continue to pray for you and your family.” Then, Ms. Bardeau-Marse replied: “I understand . . . I just appreciate you listening . . . .”

In conformity with Judge Denton’s legal advice, Ms. Bardeau-Marse consulted with her attorney, Ms. Finley. Ms. Bardeau-Marse informed Ms. Finley that she had been communicating with Judge Denton by Messenger texts and telephone calls. She showed Ms. Finley the messages, including Judge Denton’s July 13, 2018 message to file suit in another court with jurisdiction over custody. On August 10, 2018, Ms. Finley filed suit against the father on behalf of Ms. Bardeau-Marse, seeking custody or visitation. The suit was filed in the Family Court of East Baton Rouge Parish<sup>7</sup> (“Family Court”) and was allotted to Judge Lisa Woodruff-White.

Judge Denton stipulated that when he learned of the suit filed in Family Court, he called and spoke to Ms. Finley, and told her that “he had retained Jurisdiction of the DCFS (Child In Need of Care) case in Denham Springs City Court and that her suit in . . . Family Court should be dismissed.” In Ms. Finley’s sworn statement, she described the call from Judge Denton as follows:

[I told him] Judge, I did hear you say that you retained jurisdiction of the case. And I said but the case that I filed in East Baton Rouge Parish isn’t the same case. It’s [A.D.] versus Stephanie . . . Bardeau-Marse. The case you retained jurisdiction of was a Child in Need of Care case, the State versus [J.C.] . . . . all of a sudden, his attitude changed and he became very threatening, very menacing. And he said, well, I . . . think Judge Woodruff-White would disagree with that. And . . . he said that he was going to call her and have it put back in his courtroom.

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<sup>7</sup> The father resided in Baton Rouge with E.C. and P.C.

Ms. Finley stated that she told Judge Denton that she was not having an *ex parte* conversation with him because she did not think it was appropriate. Ms. Finley also told Judge Denton that her client had informed her of the *ex parte* communications between them and that he should recuse himself from the CINC proceeding.

Subsequently, Judge Denton messaged Ms. Bardeau-Marse:

Please don't think me rude but you are now a party litigant in a custody matter and have retained legal counsel and it would be inappropriate to have contact with anyone other than your legal team and we have spoken and agree it is both of our responsibility to keep in mind our obligation of the best interest of the children. In light of that[,] I feel compelled to discontinue our friendly discourse. Please don't take it personally but I must maintain my ethical and professional responsibility. I hope you understand!

Ms. Bardeau-Marse responded: "Judge . . . . I totally agree . . . my heart broke . . . all I wanted was for my visitation with my grandbabies . . . ."

Judge Denton also spoke with Ms. Lee, the attorney for the father in the CINC proceeding, and informed her of Ms. Finley's filing in Family Court.

During the first week of September 2018, Judge Denton called Judge Woodruff-White and told her he had retained jurisdiction of the case. Judge Denton testified that this call was not an attempt to influence Judge Woodruff-White to dismiss Ms. Bardeau-Marse's case in her court but to tell her, as a courtesy from one judge to another, that he really wanted to retain jurisdiction. On September 6, 2018, Judge Denton sent Judge Woodruff-White a letter to follow-up on his phone call that stated:

It was a pleasure speaking with you the other day. I wanted to remind you about the conversation we discussed, the . . . children, [E.C.] and [P.C.]. The dad . . . . whom I gave custody to, with supervised visits with the mother . . . . Attorney Maria Finley has filed a case in your court for [Ms. Bardeau-Marse] even though both were present in my courtroom and knew I had retained jurisdiction. It is my contention that Ms. Finley is forum shopping knowing full well the order of my court that is in place. Judge, I would appreciate the professional courtesy to allow me to continue to retain jurisdiction as per the Louisiana Children's Code 309. . . .

Neither in the telephone call or letter did Judge Denton tell Judge Woodruff-White that he had “strenuously suggest[ed]” to Ms. Bardeau-Marse that she “go hire the best lawyer” she could afford and to “go to court where jurisdiction over custody can be fought over.”

On September 18, 2018, Judge Woodruff-White ordered the parties to submit memoranda on the issue of jurisdiction in light of the proceedings in Denham Springs City Court. In October 2018, the parties submitted memoranda, and the father also filed a motion to dismiss or stay the proceedings in Family Court. On November 5, 2018, Judge Woodruff-White signed an order declining to exercise jurisdiction over the case and stayed the proceedings. Judge Woodruff-White also issued written reasons for judgment, stating “the Honorable Jerry Denton communicated with this Court and advised of the proceeding there,” and “[l]egitimate jurisdictional issues and concerns were expressed.” She concluded that “the Juvenile Court is a more appropriate forum to decide the pending pleading.”<sup>8</sup>

The following are additional stipulations by Judge Denton and OSC which were accepted by the Commission and set forth in the Recommendation (references to the exhibits are omitted):<sup>9</sup>

**A. General Material Facts**

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2. Judge Denton has cooperated with the Office of Special Counsel during the investigation of this matter and following issuance of the Notice of Hearing.

3. Judge Denton has no prior private counseling or public discipline for judicial ethical misconduct by the Judiciary Commission of Louisiana or the Louisiana Supreme Court.

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**C. Stipulated Material Facts Relative to Notice of Hearing No. 0381**

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<sup>8</sup> Ms. Bardeau-Marse sought review of this ruling. Her writ application to the court of appeal was denied, with one judge dissenting. *Bardeau-Marse v. Delatorre*, 19-1157 (La. App. 1 Cir. 1/6/20) (unpublished). Her writ application to this Court was not considered on timeliness grounds. *Bardeau-Marse v. Delatorre*, 20-0403 (La. 5/7/20), 296 So.3d 609.

<sup>9</sup> The Recommendation indicates that the stipulations were reproduced in the Recommendation in “their entirety with minor technical changes that do not affect substance.”

**F20.** Judge Denton acknowledges that his message [regarding catching the father if he “messes up” discussed *supra*] to Ms. Bardeau-Marse could be reasonably interpreted as having suggested that he was working privately on her behalf to get her more time or possibly, custody of her grandchildren. Judge Denton takes total responsibility for this occurrence and recognizes the patently improper aspects of these communications and the manifest resulting violations of the Code of Judicial Conduct.

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**F27.** Judge Denton acknowledges that his actions and words, such as “fighting us badly” and “our position,” could have reasonably given Ms. Bardeau-Marse the impression that he was acting as her advocate. He recognizes that his words led Ms. Bardeau-Marse to believe that he was on her side and in this fight together, while his contradictory failure to issue the visitation order after Ms. Lee opposed it greatly confused Ms. Bardeau-Marse. Judge Denton acknowledges his untoward actions were regrettable, improper, and in violation of the Code of Judicial Conduct.

**F28.** Judge Denton further recognizes that his words and actions at this point in time could reasonably lead others to question his impartiality; Judge Denton admits that he was not acting in a manner that would promote public confidence in the integrity and impartiality of the judiciary; and he should have recused himself from any and all future proceedings involving the parties . . . .

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**F36.** In his sworn statement, Judge Denton testified that he acknowledged to Ms. Finley that his *ex parte* communications with her client were inappropriate and would cease immediately. . . .

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**F42.** Even if his conversations with Judge Woodruff-White and his letter to her . . . would fall within an exception to the rules governing *ex parte* conversations. . . and might have been necessary under the law to prevent their respective Courts from rendering conflicting custody judgments, Judge Denton acknowledges that his statements to Ms. Bardeau-Marse to fight for custody in another court in another jurisdiction and his failure to advise Judge Woodruff-White of said statements, made his argument of forum shopping null and void of reason, in addition to creating a negative impression of Ms. Finley to Judge Woodruff-White. Judge Denton understands the significance of his actions and statements and recognizes that he should have and was required by law to recuse himself, instead of seeking and getting Judge Woodruff-White to dismiss or stay Ms. Bardeau-Marse’s petition for custody or visitation in her court. His failure to recuse was a violation of both Canon 3C of the Louisiana Code of Judicial Conduct and Louisiana Code of Civil Procedure Article 151, as his words and actions had resulted in the reasonable conclusion by others that he had become “biased, prejudiced, or interested in the cause or its outcome or biased or prejudiced toward or against the parties or the parties’ attorneys or any witness to such an extent that [he was or] would be unable to conduct fair and impartial proceedings.”

The Stipulation between the OSC and Judge Denton reflected that the parties agreed that Judge Denton violated the following Canons and portions of La. Const. art. 5, § 25(C) (1974):

a. Canon 1 because he “failed to observe high standards of conduct so that the integrity and independence of the judiciary may be preserved”;<sup>[10]</sup>

b. Canon 2A because he “failed to ‘respect and comply with the law and [to] act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary’” by engaging in improper *ex parte* communications and failing to recuse himself;<sup>[11]</sup>

c. Canon 3(A)(4) because he . . . “in the performance of judicial duties by words or conduct manifest[ed] bias or prejudice”;<sup>[12]</sup>

d. Canon 3A(6) because he engaged in “private or *ex parte* interviews, arguments or communications designed to influence his . . . judicial action”;<sup>[13]</sup>

e. Canon 3C because he failed to “disqualify himself . . . in a proceeding in which [his] impartiality might reasonably be questioned”;<sup>[14]</sup> and,

d. La. Const. art. V, §25(C)(1974) because he engaged in persistent and public conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

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<sup>10</sup> Canon 1 provides, in part: “A judge should participate in establishing, maintaining, and enforcing, and shall personally observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved.”

<sup>11</sup> Canon 2A states: “A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.”

<sup>12</sup> Canon 3A(4) provides, in part: “A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice.”

<sup>13</sup> Canon 3A(6) provides, in part: “Except as permitted by law a judge shall not permit private or *ex parte* interviews, arguments or communications designed to influence his or her judicial action in any case, either civil or criminal.”

<sup>14</sup> Canon 3C provides, in part: “A judge should disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned and shall disqualify himself or herself in a proceeding in which disqualification is required by law or applicable Supreme Court rule. . . .”

The parties stipulated that the only issue remaining for determination was whether Judge Denton engaged in “willful misconduct relating to his official duty,” in violation of La. Const. art. V, §25(C) (1974).

The OSC and Judge Denton agreed to a sanction of suspension from office for sixty days, without pay, and payment of costs. The matter was submitted to the Commission.

### **PROCEEDINGS OF THE COMMISSION**

On August 20, 2021, Judge Denton appeared before the Commission and testified. In addition, the parties introduced exhibits including the sworn statements of Judge Denton, Ms. Bardeau-Marse, and Ms. Finley.

In Ms. Bardeau-Marse’s sworn statement, she stated that she had trusted Judge Denton and followed his advice by having her attorney file for custody in the Family Court, only to feel “betrayed” upon learning of his letter to Judge Woodruff-White. She further testified that she was “hurt” because she “thought he was being sincere” and acting in her “best interest” and that “[y]ou can[’t] trust the system at all.”

In Ms. Finley’s sworn statement, she stated that after she was made aware of Judge Denton’s communications with Ms. Bardeau-Marse, she did not want to be further involved in the matter but agreed to represent Ms. Bardeau-Marse because Ms. Bardeau-Marse was “devastated,” and she was afraid Ms. Bardeau-Marse would be “emotionally affected, detrimentally[,] by it.” Ms. Finley indicated that following Judge Woodruff-White’s declination of jurisdiction, she entered into what she described as an “extremely contentious” process of filing writs on Ms. Bardeau-Marse’s behalf, during which she was placed in a “very uncomfortable position” of having to “point out inaccuracies” regarding the proceedings. Ms. Finley further stated: “And I really am extremely upset that a judge would do this and put my client in a situation like that. It makes me not trust what we do.”

After hearing Judge Denton's testimony (wherein each member of the Commission had the option to question Judge Denton) and reviewing the evidence submitted by the parties, the Commission made the following findings.

Judge Denton acknowledged the inappropriate nature of his actions and expressed remorse. However, the Commission was concerned that Judge Denton offered no satisfactory explanation for why he engaged in the conduct. For example, when asked why he continued his conversations with Ms. Bardeau-Marse despite the fact that they were highly improper, Judge Denton stated that he had only been on the bench for fourteen months at the time, had never practiced any kind of family law, and was not familiar with the handling of DCFS matters. Upon further questioning, he acknowledged that he did not need family law experience to know that certain conversations between a judge and an interested party were improper. He admitted that he did not engage in *ex parte* communications with judges as an attorney because he knew they were impermissible. He agreed that the training he underwent as a new judge reaffirmed the inappropriateness of these types of *ex parte* communications.

Judge Denton offered that he was "sympathetic to the plight of the grandmother," which may have "impacted and overshadowed some of [his] judgment [and] that normally [he] would not have ever made that mistake in just a normal setting." He explained that he was receptive to the initial communication from Ms. Bardeau-Marse because of their common connection to the former mayor of Denham Springs and agreed that "despite the fact that [he] knew *ex parte* communication[s] w[ere] inappropriate . . . [he] ventured down a path of repeated communications with a person [he] knew nothing about, simply because the mayor suggested it."

Judge Denton explained that he did not recuse himself after his communications with Ms. Bardeau-Marse because the DCFS file was closed, and



there were no open matters being brought before him. However, he acknowledged that he knew the case continued to be open and “unresolved” even though the file may have been closed. The Commission noted that in one of his early communications with Ms. Bardeau-Marse, Judge Denton told her he was “working on the entire situation,” and after he attempted to figure out how to issue a special order or otherwise assist her, he told Ms. Bardeau-Marse, “[b]efore this is going to go on much longer[,] we will be back [i]n court [I] am almost sure of it.”

The Commission opined that Judge Denton offered no compelling reason why he “strenuously” advised Ms. Bardeau-Marse to have her attorney file for custody in a separate court but then insisted upon retaining jurisdiction over the matter. It noted that Judge Denton attempted to explain that he reached out to Judge Woodruff-White “out of courtesy” and “full disclosure” so she would know that he was retaining jurisdiction; he, however, acknowledged that he did not disclose to Judge Woodruff-White that he had engaged in lengthy *ex parte* discussions with Ms. Bardeau-Marse, including advising her to file the matter in another court. Judge Denton stated that he chose not to mention his *ex parte* communications with Ms. Bardeau-Marse because he “assumed” that Ms. Finley had made Judge Woodruff-White aware of his conduct. The Commission was of the opinion that “[i]t appeared that Judge Woodruff-White relied at least in part upon Judge Denton’s communications to her, including his misleading statement that Ms. Finley was ‘forum shopping,’ in declining to exercise jurisdiction.” The Commission emphasized Judge Woodruff-White noted, in her reasons for judgment, that “the Honorable Jerry Denton communicated with this Court and advised of the proceeding there,” and “[l]egitimate jurisdictional issues and concerns were expressed.”

Although Judge Denton acknowledged that his actions may have given the appearance of bias or prejudice, he denied that he was actually biased or prejudiced

towards or against any party or interested person. When questioned about texting to Ms. Bardeau-Marse that the father's attorney was "fighting us badly" about the special order he was trying to issue in her favor, he attempted to explain that the "us" to whom he was referring was his "Court, [his] staff, and the Department of Children and Family Services." The Commission found this explanation to not be credible. It noted that on the same night that he told Ms. Bardeau-Marse that the father's attorney was "fighting us badly," Judge Denton texted her that he was "consulting with some other family court judges to try and come up with some resolve [sic] to get you all some rights without having to hire lawyers" and "you mustn't give up or cause yourself to have a mental collapse because that won't help our position." Moreover, a month later, in response to Ms. Bardeau-Marse "begging for help," Judge Denton told her that he "never give[s] up," and he had to "navigate a system fraught with failure," but she should "have faith." The Commission opined these words indicated he was aligned with Ms. Bardeau-Marse and taking steps to be an advocate for her.

The Commission concluded, in addition to the stipulated violations by the parties, that Judge Denton violated Canons 3A(4) (a judge "shall perform judicial duties without bias or prejudice") and 3C ("A judge . . . shall disqualify himself or herself in a proceeding in which disqualification is required by law or applicable Supreme Court rule. . . ."), and he engaged in "willful misconduct relating to his official duties," in violation of La. Const. art. V, § 25(C) (1974). The Commission recommended a six-month suspension from office, without pay, and payment of costs.

## **LAW AND DISCUSSION**

Louisiana Constitution Article V, § 25(C)(1974) provides:

**(C) Powers.** On recommendation of the judiciary commission, the supreme court may censure, suspend with or without salary, remove from office, or retire involuntarily a judge for willful misconduct

relating to his official duty, willful and persistent failure to perform his duty, persistent and public conduct prejudicial to the administration of justice that brings the judicial office into disrepute, conduct while in office which would constitute a felony, or conviction of a felony. On recommendation of the judiciary commission, the supreme court may disqualify a judge from exercising any judicial function, without loss of salary, during pendency of proceedings in the supreme court. On recommendation of the judiciary commission, the supreme court may retire involuntarily a judge for disability that seriously interferes with the performance of his duties and that is or is likely to become permanent. The supreme court shall make rules implementing this Section and providing for confidentiality and privilege of commission proceedings.

Pursuant to La. Const. art. V, § 25(C) (1974), this Court has original jurisdiction in judicial disciplinary proceedings. Under its supervisory authority over all lower courts, this Court adopted the Code of Judicial Conduct, effective January 1, 1976, which is binding on all judges. Violations of the Canons of the Louisiana Code of Judicial Conduct may serve as the basis for the disciplinary action provided for by La. Const. art. V, § 25(C) (1974). *In re Quirk*, 97-1143, p. 4 (La. 12/12/97), 705 So.2d 172, 176.

### ***STIPULATED VIOLATIONS***

The parties stipulated that Judge Denton's conduct violated Canons 1, 2A, and 3A(6) and specified portions of 3A(4) and 3C of the Louisiana Code of Judicial Conduct (1996). Based on these violations, the parties agreed that Judge Denton engaged in "persistent and public conduct prejudicial to the administration of justice" that brought the judicial office into disrepute, pursuant to La. Const. art. V, § 25(C) (1974). Because Judge Denton stipulated to relevant facts and admitted facts that establish violations of the Code of Judicial Conduct, this Court is "left only with the task of deciding the appropriate measure of discipline" as to these stipulated violations. *See In re Decuir*, 95-0056, p. 8 (La. 5/22/95), 654 So.2d 687, 692.

### ***ADDITIONAL VIOLATIONS***

As discussed above, the Commission found that Judge Denton violated specified portions of Canons 3A(4) and 3C and that Judge Denton's actions were

“willful misconduct relating to his official duties,” pursuant to La. Const. art. V, § 25(C) (1974).

The standard of proof in judicial discipline cases is the clear and convincing standard. *Quirk*, 97-1143, p. 4, 705 So.2d at 176. “This standard requires that the level of proof supporting the Commission’s factual findings must be more than a mere preponderance of the evidence but less than beyond a reasonable doubt.” *Id.* Once the violations of the judge have been established by clear and convincing proof, La. Const. art. V, § 25(C) (1974) sets forth the disciplinary options available to this Court: “On recommendation of the judiciary commission, the supreme court may censure, suspend with or without salary, remove from office, or retire involuntarily a judge . . . .” Because this Court has original jurisdiction, it has the power to make original determinations of fact based upon the evidence in the record and is not bound by, nor required, to give any weight to the findings and recommendations of the Commission. *Quirk*, 97-1143, pp. 3-4, 705 So.2d at 176. However, “no new evidence is presented to [the Supreme Court] and only that evidence adduced at the hearing before the Commission is considered.” *In re Decuir*, 95-0056, p. 7, 654 So.2d at 692 (citing *In Re Whitaker*, 463 So.2d 1291, 1298 (La. 1985)).

#### **Canon 3A(4)**

The Commission found Judge Denton also violated the portion of Canon 3A(4) that provides a judge “shall perform judicial duties without bias or prejudice.”<sup>15</sup> In support, in the Recommendation, the Commission pointed out that Judge Denton gave Ms. Bardeau-Marse the name and number of a private investigator; he told her he would keep his eyes on A.D.; he told her he would “catch [A.D.] when he messes up and he will. . . .”; and, he referred to A.D. as a “liar.” In

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<sup>15</sup> Of the nine members on the Commission, two voted against a conclusion that Judge Denton was actually biased or prejudiced.

addition, the Commission cited Judge Denton's action in advising Ms. Bardeau-Marse to file for custody in another jurisdiction. Furthermore, regarding Judge Denton's attempt to issue a special order for visitation, the Commission determined that Judge Denton's words such as "fighting us badly" and "our position," suggested that he had become emotionally involved with Ms. Bardeau-Marse and her legal conflict with A.D. and that he was acting as her advocate. The Commission espoused that the fact Judge Denton was unsuccessful in issuing a special order did not negate the fact that he attempted to do so on behalf of Ms. Bardeau-Marse after engaging in *ex parte* communications.

At the hearing presided over by the Commission, Judge Denton testified regarding his reference to "we" and "us" in his messages to Ms. Bardeau-Marse as follows:

I would like to clarify that. And I do understand how that could be taken as such. When I use the term "we" and "us," I, in my mind, I was referring to my Court, my staff, and the Department of Children and Family Services; that was the "us" and the "we" that I was referring to; not parties. But I could see how it could be taken the other way.

In the Recommendation, the Commission found Judge Denton's explanation of "we" and "us" not credible. It concluded that "[w]hile Judge Denton may have genuinely believed that he was not biased and could remain impartial, it simply strains credibility to conclude that he was actually unbiased or uninterested in [the] matter."

The Commission continued:

An unbiased and impartial Judge does not engage in extensive *ex parte* communications about the case and the parties with a person interested in the case, does not attempt to take Judicial action based on such communications, does not identify himself and align himself with that person's position, does not give that person legal advice, and does not seek to maintain control of the case by making misrepresentations to another judicial officer.

During his testimony, Judge Denton admitted that the "wording of certain things to [Ms. Bardeau-Marse] could have been taken as having given legal advice

...” and that communicating with Ms. Bardeau-Marse about issuing a special order for visitation “was not the wisest choice” and that it was wrong. Judge Denton, however, responded that his actions were not the result of any bias or prejudice towards any party.<sup>16</sup>

In his brief to this Court, Judge Denton explained that he struggled to do the right thing under the law “in the best interest of the children while showing compassion for a grieving grandmother.” Judge Denton emphasized that he denied Ms. Bardeau-Marse’s petition for intervention twice. In addition, Judge Denton denied he acted against Ms. Bardeau-Marse’s interest when he informed Judge Woodruff-White that he retained jurisdiction of the custody matter. Judge Denton challenged the Commission’s finding, arguing in part:

When viewed in isolation of all of the facts, as stipulated, Judge Denton’s actions could be perceived by others as “bias or prejudice;” however, when **all of the facts** and testimony have been considered, as set out in the Stipulations and upon reviewing Judge Denton’s testimony at his personal appearance, there is **no** support for the Commission’s conclusion of law that Judge Denton was biased or prejudiced in his conduct of the proceedings.

After reviewing the record, we conclude that the evidence supports that, by clear and convincing proof under the unusual circumstances of this case, Judge Denton violated Canon 3(A)(4). In the performance of his judicial duties, Judge Denton’s words and conduct manifested at the very least bias when he gave Ms. Bardeau-Marse the name and number of a private investigator and told her he would keep his eyes on the father; attempted to issue a special order for extra-visitiation; and, advised Ms. Bardeau-Marse to file for custody in another jurisdiction.

### **Canon 3C**

The Commission argued that Judge Denton was “so personally involved and interested” in the custody/visitiation fight, he was required by Canon 3C and La.

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<sup>16</sup> At the hearing, Judge Denton responded that he was not taking the position that the *ex parte* conversations with Ms. Bardeau-Marse were appropriate because she was not a “party.”

C.C.P. art. 151 to recuse himself from the CINC proceeding, but failed to do so. During the Commission proceedings, Judge Denton did not stipulate that he violated the portion of Canon 3C that requires a judge to recuse himself “in a proceeding in which disqualification is required by law.” He disagreed that recusal was compelled under La. C.C.P. art. 151(4), which requires recusal if “[t]he judge is biased, prejudiced, or interested in the cause or its outcome or biased or prejudiced toward or against the parties or the parties’ attorneys or any witness to such an extent that the judge would be unable to conduct fair and impartial proceedings.” In his brief to this Court, Judge Denton did not address recusal pursuant to Article 151. Notwithstanding, in July 2021, Judge Denton filed a motion to recuse himself from the CINC proceeding, including all future motions and filings. During his testimony before the Commission, Judge Denton testified he recused himself from the CINC proceeding, explaining that “[a]fter consulting counsel and making a determination . . . it would probably be appropriate and in order for me to put in an official recusal in that file for the future should that matter come up again.” In addition, the joint stipulation between OSC and Judge Denton provided:

**F28.** Judge Denton further recognizes that his words and actions at this point in time could reasonably lead others to question his impartiality; Judge Denton admits that he was not acting in a manner that would promote public confidence in the integrity and impartiality of the Judiciary; and he should have recused himself from any and all future proceedings involving the parties. . . .

. . . .

**F42.** . . . Judge Denton understands the significance of his actions and statements and recognizes that he should have and was required by law to recuse himself, instead of seeking and getting Judge Woodruff-White to dismiss or stay Ms. Bardeau-Marse’s petition for custody or visitation in her court. His failure to recuse was a violation of both Canon 3C of the Louisiana Code of Judicial Conduct and Louisiana Code of Civil Procedure Article 151, as his words and actions had resulted in the reasonable conclusion by others that he had become “biased, prejudiced, or interested in the cause or its outcome or biased or prejudiced toward or against the parties or the parties’ attorneys or any witness to such an extent that [he was or] would be unable to conduct fair and impartial proceedings.”

Considering Judge Denton’s stipulations and his recusal from the CINC proceeding in July 2021, whether the evidence supported a finding that Judge Denton violated that disputed portion of Canon 3C and whether recusal was mandated under Article 151 need not be determined.

### **“Willful” misconduct**

The Commission unanimously determined that Judge Denton engaged in “willful misconduct relating to his official duty,” pursuant to La. Const. art. V, § 25 (C) (1974). In support, the Commission pointed out in its brief to this Court that Judge Denton stipulated that he “willingly permitted and participated in the private communications related to an unresolved and contentious custody case.” At the hearing, Judge Denton testified he knew the *ex parte* communications were improper. In addition, as discussed *supra*, Judge Denton, *ex parte*, attempted to issue a special order for extra visitation for Ms. Bardeau-Marse. Moreover, the Commission emphasized that Judge Denton advised Ms. Bardeau-Marse to hire the best lawyer she could afford and to file her case in a court where jurisdiction over custody could be fought, and, when she did, he actively sought to retain jurisdiction.

The Commission argued:

This was not a careless oversight. Judge Denton severely contradicted his advice to Ms. Bardeau-Marse to pursue her case in another forum; he deliberately impugned the character and actions of a member of the bar, and willfully mislead Judge Woodruff-White, which led to contentious proceedings in her court and the Court of Appeal.

The Commission asserted that Judge Denton’s misconduct was “the result of deliberate conscious actions, not inadvertence or negligence.”

At the hearing, counsel for OSC argued that “[t]he word ‘willfully’ means done with intention or deliberately, as defined by Merriam-Webster,” and “[t]here is no element of bad faith involved in the definition of willful.”

In his brief to this Court, Judge Denton responded that there is no evidence to support his actions were “willful,” as “willful” is “an active and intentional desire to



bring about an untoward consequence,” and that he never intentionally set out to harm anyone. Judge Denton argued that “willful” “means something more than voluntary or willingly but also indicates the presence of some malice or desire to achieve an untoward result.” Judge Denton urged that “[i]f this Court were to accept the Commission’s reasoning that intentional simply means a person intends to perform an action, then all conduct would be ‘willful,’” and “[i]t is the substance of an action and not the physical act itself that makes conduct willful.”

At the hearing presided over by the Commission, counsel for Judge Denton argued that “willful” connotes when a person sets out to achieve a desired result, and here, there were no facts to support that he set out to achieve a desired result.

Counsel for Judge Denton continued:

Willful is an active and, intentional desire to bring about an untoward consequence. Of course it was intentional that [Judge Denton’s] hands hit the keyboard and that these messages were transmitted, but there is not one scintilla of evidence, not even a suggestion, that he intended to bring about some untoward occurrence or action. . . . It was certainly willful conduct, but it wasn’t willful misconduct in the sense that he sought to bring about some salacious or dilatory or untoward actions.

Judge Denton asserted that “[a]ll of his actions were motivated by his belief that he was acting within the best interest of the children involved.” In his brief filed in this Court, Judge Denton emphasized that “[n]o one . . . achieved any advantage, suffered any adverse consequences, or otherwise benefited from or sustained a disadvantage” from his words and actions.

Turning to the constitutional article, “willful” is not expressly defined in La. Const. art. V, § 25(C); thus, we must consult our jurisprudential and statutory rules on interpretation of statutes. In *Gregor v. Argenot Great Central Insurance Company*, 02-1138, pp. 6-7 (La. 5/20/03), 851 So.2d 959, 964 (footnote omitted), this Court explained in pertinent part:

The starting point for the *interpretation* of any statute is the language of the law itself. *Ginn v. Woman’s Hospital Foundation, Inc.*, 02-1913, p. 9 (La. 4/9/03), 842 So.2d 338, 344; *Rougeau v. Hyundai*

*Motor America*, 01-1182, p. 5 (La. 1/15/02), 805 So.2d 147, 151. Special rules for interpreting a statute . . . have been enacted by the legislative branch and are found in La. R.S. 1:1 *et seq.* Louisiana Revised Statute 1:3 provides, in pertinent part, that “[w]ords and phrases *shall* be read with their context and *shall* be construed according to the common and approved usage of the language” and the “word ‘*shall*’ is mandatory.” (Emphasis added.) Louisiana Revised Statute 1:4 provided that “[w]hen the wording of a Section [of a statute] is clear and free of ambiguity, the letter of it shall not be disregarded under the pretext of pursuing its spirit.” The legislative branch also has provided general rules for interpreting laws in La. C.C. art. 9 *et seq.* See, in particular, La. C.C. arts. 9 and 11. We are bound by the language of a relevant law. *Allen v. State, through the Ernest N. Morial-New Orleans Exhibition Hall Authority*, 02-1072, p. 12 (La. 4/9/03), 842 So.2d 373, 381.

Louisiana Civil Code Article 11 provides: “The words of a law must be given their generally prevailing meaning. Words of art and technical terms must be given their technical meaning when the law involves a technical matter.” In *Gregor*, this Court explained that “[d]ictionaries are a valuable source for determining the common and approved usage of words.” *Gregor*, 02-1138, p. 7, 851 So.2d at 964 (quoting *Louisiana Horsemen’s Benevolent and Protective Assoc. 1993, Inc. v. Fair Grounds Corp.*, 02-1928, p. 5 (La. 4/9/03), 845 So.2d 1039, 1042).

“Willful,” which is an adjective, is defined in Black’s Law Dictionary (11<sup>th</sup> ed. 2019) as “[v]oluntary and intentional, but not necessarily malicious,” and “[a] voluntary act becomes willful, in law, only when it involves conscious wrong or evil purpose on the part of the actor, or *at least inexcusable carelessness, whether the act is right or wrong* (emphasis added).” “The term *willful* is stronger than *voluntary* or *intentional*.” *Id.* In addition, “willfulness” is defined as “[t]he quality, state, or condition of acting purposely or by design; deliberateness; intention;” “[it] does not necessarily imply malice, but it involves more than just knowledge;” and, “[t]he voluntary, intentional violation or disregard of a known legal duty.” *Id.* The Merriam Webster Dictionary defines “willful” as “obstinately and often perversely self-willed” and “done deliberately.”

In *In re Elloie*, 05-1499, p. 30 (La. 1/19/06), 921 So.2d 882, 902, this Court held that “[t]here is no subjective intent requirement for judicial misconduct.”<sup>17</sup> The *Elloie* Court explained, in pertinent part:

An act does not have to be intentional to support judicial discipline. *In re: Hunter*, 2002-1875 p. 16 (La. 8/19/02), 823 So.2d 325, 336 (“[A] judge may also, through negligence or ignorance not amounting to bad faith, behave in a manner prejudicial to the administration of justice so as to bring the judicial office into disrepute.”). Moreover . . . the fact that other judges or other circumstances may correct the erroneous or legally unsupportable judicial action does not absolve the respondent judge from the consequences of his wrongful acts.

*Id.*; see also, *In re Gremillion*, 16-0054, p. 21 (La. 6/29/16), 204 So.3d 183, 195 (wherein this Court held that the judge’s assurances that his actions were not deliberate, intentional, or meant to hurt anyone did not preclude a finding of ethical misconduct sufficient to warrant a recommendation of discipline). Similarly, in *Small v. Guste*, 383 So.2d 1011, 1014 (La. 1980), this Court found a judge who refused to perform his constitutional and ethical duty to retire upon reaching mandatory retirement age was guilty of “willful misconduct relating to his official duty.” In *In re Fuselier*, 02-1661 (La. 1/28/03), 837 So.2d 1257, the Commission found the judge engaged in impermissible *ex parte* communications by accepting requests to “fix” traffic tickets and/or other offenses, and having an employee of his court contact the district attorney’s office or city attorney’s office to relay the messages. *Id.*, 02-1661, p. 16, 837 So.2d at 1259. This Court explained that “[e]*x parte* communications can suggest bias or partiality on the part of the judge” and “[a]t worst, *ex parte* communication is an invitation to improper influence if not outright corruption.” *Id.*, 02-1661, p. 21, 837 So.2d at 1271 (quoting Jeffrey M.

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<sup>17</sup> In *In re Elloie*, 05-1499 (La. 1/19/06), 921 So.2d 882, the Commission determined that Judge Elloie violated Canons 1 and 2 of the Code of Judicial Conduct and engaged in willful misconduct relating to his official duty and in persistent and public conduct prejudicial to the administration of justice that brings the judicial office into disrepute, all in violation of La. Const. art. V, § 25 (C). Judge Elloie disputed the violation, arguing that he did not believe he committed judicial misconduct for two reasons: “First, he did not intend to violate the judicial canons or the constitution. Second, the actions he performed were not irrevocable, and were, in fact, subsequently set aside.” *Id.*, 05-1499, p. 30, 921 So.2d at 902.

Shaman et al., *Judicial Conduct and Ethics*, Sec. 5.01 (3rd ed. 2000)). It agreed that this misconduct by Judge Fuselier was in violation of La. Const. art. V, § 25(C). In support of the determination that the judge was in violation of section 25(C), the *Fuselier* court cited *Ryan v. Commission on Judicial Performance*, 45 Cal.3d 518, 247 Cal.Rptr. 378, 754 P.2d 724, 733 (1988), wherein the Supreme Court of California found the judge's conduct of calling the district attorney assigned to a criminal case docketed to his court, *ex parte*, and urging the district attorney to prosecute the defendant on a felony instead of a misdemeanor constituted willful misconduct, despite the fact that the district attorney did not follow the judge's suggestion, and the judge had no further contact with the case. *In re Fuselier*, 02-1661, pp. 21-22, 837 So.2d at 1271.

Applying jurisprudential and statutory rules on interpretation of statutes and reviewing prior case law, we reject the contention that the term "willful," in the context of La. Const. art. V, § 25(C) (1974), requires the misconduct to be done with the intent to bring about a negative consequence or to be done in bad faith.

With the definition of "willful" misconduct in the context of Article V, § 25(C) (1974) in mind, we find there is clear and convicting proof that Judge Denton's misconduct, which was related to his official duty, was willful. Judge Denton knowingly and intentionally engaged in improper *ex parte* communications (which he knew from the beginning were improper), wherein he offered to issue a special order for Ms. Bardeau-Marse, and advised Ms. Bardeau-Marse to file for custody in another jurisdiction. He initiated a contentious *ex parte* conversation with Ms. Finley regarding retaining jurisdiction of the custody matter. He intentionally misled Judge Woodruff-White in an effort to retain jurisdiction of the custody matter (which was within his discretion to do pursuant to La. Ch.C. art. 309), by concealing his advice to Ms. Bardeau-Marse to file for custody in another jurisdiction and by accusing Ms. Finley of forum shopping.

In conclusion, the parties stipulated that Judge Denton’s conduct violated Canons 1, 2A, and 3A(6) and specified portions of 3A(4) and 3C of the Louisiana Code of Judicial Conduct (1996), and that Judge Denton engaged in “persistent and public conduct prejudicial to the administration of justice” that brought the judicial office into disrepute, pursuant to La. Const. art. V, § 25(C) (1974). In addition, we conclude the evidence supports, by clear and convincing proof, that Judge Denton violated Canon 3(A)(4) in that in the performance of his judicial duties, his words manifested bias, and he engaged in “willful misconduct relating to official duties” in violation of La. Const. art. V, § 25(C) (1974).

### ***SANCTION***

The parties agree that the sanction should include a suspension. The issue before this Court is the duration of the suspension.

The Commission recommended a six-month suspension,<sup>18</sup> without pay, asserting, in pertinent part:

Although the Commission appreciated Judge Denton’s sincere remorse for his actions, they were so obviously inappropriate that, quite simply, he should have known better. It is the Commission’s belief that a six-month suspension will protect the public by ensuring that Judge Denton will be extraordinarily careful in the future not to engage in unethical conduct, by reassuring the public—and especially Ms. Bardeau-Marse and Ms. Finley—that judicial officers are held to proper account for such blatantly improper actions, and by sending a clear message about how seriously the Court views willful actions that sow public distrust in the integrity and impartiality of the judiciary.

The OSC and Judge Denton agreed to a sixty-day suspension without pay. In support, Judge Denton argued in his brief to this Court:

No one else benefited, nor did anyone ever suffer any adverse consequences as the result of his actions. For the Commission to infer - although without support- that Judge Denton exercised “bias in favor of Ms. Bardeau-Marse and against [A.D.] . . .” is absurd. He ruled against Ms. Bardeau-Marse at every stage of the proceedings. The orders that he rendered were favorable to [A.D.].

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<sup>18</sup> Seven members on the Commission voted for the six-month suspension, and two voted for the sixty-day suspension.

Judge Denton is a good person. He is respected, highly regarded and recently re-elected without opposition. He has always tried to do the right thing. While his comments and arguably his actions in these proceedings were misguided, they certainly did not elevate to the level of “willful” misconduct. Nor did they evidence any “bias” either toward or against the litigants [in] the underlying custody dispute.

The stipulated recommendation of Judge Denton and of the OSC was fully supported by an analysis of the *Chaisson* factors. Further, as acknowledged by the stipulated facts, Judge Denton has set in motion a series of remedial actions in order to insure that this type of “social media” ensnar[e]ment never again occurs.

In *In re Williams*, 11-2243, p. 10 (La. 1/24/12), 85 So.3d 5, 13 (citations omitted), this Court explained that “[i]n determining an appropriate sanction, we are mindful that the primary purpose of the Code is the protection of the public rather than simply to discipline judges,” and “the discipline to be imposed depends on the facts of each case and the totality of the circumstances, and is guided by the factors identified in [*In re*] *Chaisson*.” To determine an appropriate sanction, this Court in *In re Chaisson*, 549 So.2d 259, 266 (La.1989), adopted the criteria (referred to as the *Chaisson* factors) set forth in *Matter of Deming*, 108 Wash.2d 82, 736 P.2d 639, 659 (1987):

To determine the appropriate sanction, we consider the following nonexclusive factors: (a) whether the misconduct is an isolated instance or evidenced 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.

We consider each *Chaisson* factor in turn. Judge Denton’s improper *ex parte* communications with Ms. Bardeau-Marse, while he was presiding over the custody case, were sustained over a six month period. During this six-month period, Judge

Denton's improper *ex parte* communication resulted in other *ex parte* misconduct, which included: an attempt to issue a special order for visitation; and, misleading a fellow judge by failing to disclose his personal involvement in the custody matter and by disparaging an attorney. Although the improper *ex parte* conversations between Judge Denton and Ms. Bardeau-Marse occurred in private, at all relevant times, Judge Denton was acting in his official capacity as a judge. In mitigation, Judge Denton cooperated with the OSC during the investigation. He also entered into an extensive stipulation of facts and evidence regarding his actions and conduct. He was remorseful. However, despite many admissions of wrongful conduct to the Commission, Judge Denton persisted in his argument that his misconduct was not "willful" or "bias" against a party or interested party. Also concerning was Judge Denton's position that no one suffered any adverse consequences as the result of his actions. In mitigation, Judge Denton made efforts to change and modify his behavior, which included recusing himself from the custody matter (but only after counsel advised him to do so), deleting his social media accounts, and implementing a system in his office to avoid *ex parte* communications. He also sought training and education in children and family matters and re-familiarized himself with his duties and responsibilities as a judge. Judge Denton assumed judicial office on January 1, 2017, and he had been on the bench for eighteen months at the time of his ethical misconduct. Although Judge Denton had not practiced in the area of family law prior to being elected to the bench, he was an experienced attorney having served as an assistant attorney general. As well, Judge Denton acknowledged that when he was a practicing attorney, he was aware that *ex parte* conversations about a pending matter with a judicial officer were improper. There were no prior complaints regarding Judge Denton. Notwithstanding, Judge Denton's misconduct adversely affected the integrity and the respect of the judiciary. By communicating privately with Ms. Bardeau-Marse, Judge Denton's actions implied that he was aligned with

her position. In addition, by attempting to take judicial action on her behalf, Judge Denton stepped outside of his role as a neutral arbiter and undermined the fair and impartial administration of justice. Although Judge Denton may have begun the communication with Ms. Bardeau-Marse for reasons of compassion, the evidence indicates Judge Denton developed a personal interest which was reflected in his conduct of instructing Ms. Bardeau-Marse to file in another jurisdiction, then actively seeking to prevent Judge Woodruff-White from considering the matter, including withholding from Judge Woodruff-White his *ex parte* communication with Ms. Bardeau-Marse and disparaging Ms. Finley in the process. Numerous court staff, attorneys, and the parties in the custody matter became aware of Judge Denton's misconduct. Ms. Bardeau-Marse and Ms. Finley testified that they lost trust in the legal system as a result of Judge Denton's misconduct. The Commission succinctly summed up the impact of Judge Denton's actions: "Judge Denton's actions resulted in chaotic and contentious proceedings before Judge Woodruff-White and during the writ process that followed, which understandably caused Ms. Finley great distress, deprived or significantly delayed Ms. Bardeau-Marse her day in court, left her feeling confined, betrayed, and devastated." As to the final factor, we agree with the Commission that the evidence does not suggest that Judge Denton exploited his position to satisfy his personal desires.

Judge Denton argued that prior cases involving similar misconduct support at most a sixty-day suspension. Although prior case law may lend guidance, it is not determinative of the sanction, as the proper sanction to be imposed is decided on a case by case basis, applying the *Chaisson* factors. A review of cases involving improper *ex parte* communication by a judge that were found in violation of La.



Const. art. V, § 25(C) (1974), indicates a sanction range from censure to removal from office.<sup>19</sup>

With the purpose of the disciplinary proceedings in mind and applying the *Chaisson* factors to the present case, the record establishes that Judge Denton has no prior ethical lapses and sought no personal gain. Judge Denton has expressed sincere remorse, implemented remedial measures, fully cooperated with the Judiciary Commission, and fully stipulated to the facts, admitting his mistakes and violations of the canons. In light of the totality of Judge Denton's misconduct, and in an effort to protect the public and the public's confidence in the judiciary, we find the sanction in this case of a four-month suspension from office,

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<sup>19</sup> See, *In re Fuselier*, 837 So.2d 1257 (wherein this Court found a 120-day suspension appropriate for a seasoned judge who: (1) held a witness in contempt for failure to appear in court pursuant to a subpoena, even though the witness had not been properly subpoenaed; (2) contacted and met with the witness's employer, which ultimately led to the termination of the witness's employment; (3) abused his judicial authority by conducting arraignments and accepting guilty pleas in criminal cases in the absence of a prosecutor and by dismissing misdemeanor traffic cases without involving the prosecutor; (4) engaged in impermissible *ex parte* communications by "fixing" traffic tickets and/or other offenses; and, (5) abused his constitutional judicial authority by "instituting, authorizing, and participating in" the worthless check program); *In re Boothe*, 12-1821 (La. 1/29/13), 110 So.3d 1002 (wherein Judge Boothe was suspended for one year without pay for, among other misconduct: (1) failing to recuse himself from hearing a defendant's motion for resentencing because the defendant was going to make allegations against another judge who allegedly did not get along with Judge Boothe and to exonerate Judge Boothe from previous allegations that the defendant had made against him; and (2) engaging in impermissible *ex parte* communications with the defendant); *In re Badeaux*, 11-0214 (La. 7/1/11) 65 So.3d 1273 (wherein this Court held that public censure was warranted for a judge who: (1) failed to recuse himself from a custody matter in which he was friends with the mother and father; (2) had *ex parte* conversations with the father; (3) took trips with the father while the case was pending before him; and, (4) signed a legally deficient order in favor of the father); *In re Bengé*, 09-1617 (La. 11/6/09) 24 So.3d 822 (wherein this Court held that removal from judicial office was warranted as discipline for a judge, who, among other misconduct, engaged in impermissible *ex parte* conversations with another judge designed to influence her judicial action and for awarding the plaintiff a judgment not based on the evidence, but based on outside factors, such as, her relationships with the other judge and the plaintiff's attorney); *In re Free*, 14-1828 (La. 12/9/14), 158 So.3d 771 (wherein this court suspended the judge from office for 30 days without pay for: (1) engaging in improper *ex parte* communications with a party in an environmental contamination class action lawsuit in response to a request for his recusal and attempting to resolve the matter during such communications; and, (2) accepting an invitation to participate in an all-expenses-paid trip on a private jet to a hunting ranch in Texas, extended to him by attorneys in a personal injury case before him at or near the time of settlement negotiations, including an attorney who regularly tried cases in his court, which trip occurred shortly after the trial was concluded); and, *In re Cresap*, 06-1242 (La. 10/17/06) 940 So.2d 624 (wherein this Court concluded a 30-day suspension without pay and payment of costs was reasonable when the trial judge: (1) failed to act as a neutral arbiter; (2) by allowing counsel for plaintiffs to influence his decision making; and, (3) engaging in improper *ex parte* telephone communications with the Attorney General during proceedings held before him).

without pay, would serve the purposes of the disciplinary system. Additionally, we accept the Commission's recommendation that Judge Denton be ordered to reimburse and pay to the Commission \$4,676.25 in costs.<sup>20</sup>

### **CONCLUSION**

The parties stipulated that Judge Denton's conduct violated Canons 1, 2A, and 3A(6) and specified portions of 3A(4) and 3C of the Louisiana Code of Judicial Conduct (1996), and that Judge Denton engaged in "persistent and public conduct prejudicial to the administration of justice" that brought the judicial office into disrepute, pursuant to La. Const. art. V, § 25(C) (1974). In addition, we conclude that Judge Denton violated Canon 3(A)(4) of the Louisiana Code of Judicial Conduct (1996) in that in the performance of his judicial duties, his words and actions manifested bias, and he engaged in "willful misconduct relating to official duties" in violation of La. Const. art. V, § 25(C) (1974). As a sanction, Judge Denton is suspended from office without pay for a period of four months and ordered to pay to the Commission the sum of \$4,676.25 in costs.

### **DECREE**

It is ordered that Judge Denton be and hereby is suspended from office without pay for a period of four months, and is furthermore ordered to pay to the Commission the sum of \$4,676.25 in costs.

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<sup>20</sup> "Pursuant to La. Sup.Ct. Rule XXIII, § 22, the Commission has the right to recover costs, subject to this court's review." *In re Elloie*, 05-1499, p. 33, 921 So.2d at 904 (citations omitted) (footnote omitted).

**SUPREME COURT OF LOUISIANA**

**No. 2021-O-01801**

**IN RE: JUDGE JERRY L. DENTON, JR.**

**Judiciary Commission of Louisiana**

**Crichton, J., dissents and assigns reasons.**

I dissent and would accept the recommendation of the Judiciary Commission.

**SUPREME COURT OF LOUISIANA**

**No. 2021-O-01801**

**IN RE: JUDGE JERRY L. DENTON, JR.**

Judiciary Commission of Louisiana

**GENOVESE, J., dissents and assigns reasons.**

I dissent and would accept the recommendation of the Judiciary Commission.

**SUPREME COURT OF LOUISIANA**

**No. 2021-O-01801**

**IN RE: JUDGE JERRY L. DENTON, JR.**

Judiciary Commission of Louisiana

**McCALLUM, J., dissents and assigns reasons.**

I respectfully dissent and would accept the recommendation of the Judiciary Commission.