SUPREME COURT OF LOUISIANA

No. 2022-O-1828

IN RE: JUDGE GUY E. BRADBERRY

JUDICIARY COMMISSION OF LOUISIANA

WEIMER, C.J., dissenting.

I respectfully dissent. Not mentioned in this court's per curiam is the fact that the Judiciary Commission and the respondent judge reached an agreement as to an appropriate sanction[1] which the majority rejected as being too harsh, choosing instead to impose the mildest permissible sanction.

While this court is vested with exclusive original jurisdiction in judicial disciplinary proceedings, the court must await a recommendation from the Judiciary Commission before discipline can be imposed on a judge. La. Const. art. 5, § 25; **In re: Huckaby**, 95-0041, p. 4 (La. 5/22/95), 656 So.2d 292, 295. Because this court is not equipped to hear evidence, the Judiciary Commission (a constitutionally established body composed of judges, attorneys and other citizens who are neither judges nor attorneys) conducts hearings, receives evidence, and makes recommendations as to discipline. La. Const. art. 5, § 25; **Huckaby,** 95-0041 at 5, 656 So.2d at 296. As the court of original jurisdiction, this court is not bound by, nor required to give any weight to, the findings and recommendations the Judiciary Commission. **In re: Quirk**, 97-1143, pp. 3-4 (La. 12/12/97), 705 So.2d 172, 175-176. Nevertheless, in this case, the Judiciary Commission and the respondent judge reached a negotiated agreement as to the appropriate sanction to be imposed after the

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[1] The Judiciary Commission and the respondent proposed that respondent receive a public censure in the **Chesson** matter, pursuant to a Deferred Recommendation of Discipline Agreement previously reached in that matter, and that respondent be suspended without pay for 30 days and ordered to pay $1,548.00 in costs for his admitted misconduct in the **Stine** matter.

respondent stipulated to the facts and to the misconduct those facts represent. In such circumstances, this court need not make its own factual determinations, but simply reviews the recommendation jointly presented. The recommendation may be rejected, but the majority's action here is unprecedented, being the first time this court, in a judicial disciplinary matter, has rejected a consent sanction as being too harsh.[2] And, the majority does so without explaining why a departure from the recommendation of the harsher sanction (previously agreed to by the respondent Judge) is warranted.

The evidence indicates that respondent is an exceptional person, dedicated to his faith, his family, and his community. **In Re: Judge Guy E. Bradberry**, 22-1828, p. 7 n.3 (La. __/__/23), ___ So.3d ___. He is remorseful and has accepted responsibility for his actions. ***Id.*** at p. 7. He made mistakes and, in agreeing to the negotiated sanction, obviously believed that original sanction to be appropriate under the circumstances. I remain willing to accept that sanction out of respect for the dedicated work of the Judiciary Commission and the consent of the respondent Judge, albeit finding the sanction to be lenient.

In its per curiam, the majority recognizes that the respondent's admitted misconduct was "serious," and that he is "an experienced judicial officer" who had already been disciplined for judicial misconduct. ***Id.*** at p. 8. The per curiam recounts in some detail the conduct for which respondent is being sanctioned; yet it provides no insight as to why it believes the departure from the original negotiated sanction to be appropriate.

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[2] On occasion, this court has rejected lawyer consent discipline petitions as being too harsh, but this is the exception. Rather, the general rule in the analogous *lawyer* disciplinary arena is that the sanction in a petition for consent discipline will be accepted even if it appears too harsh, on the theory that the parties have agreed to the sanction. See, **In re: Hernandez**, 00-1283, p. 4 (La. 10/6/00), 770 So.2d 330, 331 n.4 ("While this court has rejected sanctions in consent discipline proceedings which are too lenient, we have sometimes accepted sanctions in such proceedings which arguably could be considered too harsh because the parties have agreed to the sanction."). I see no reason to depart from that general rule in the context of a *judicial* discipline case.

To be more specific, the per curiam outlines misconduct on the part of respondent in two matters: the **Chesson** matter and the **Stine** matter. As the majority acknowledges, respondent agreed to accept a public censure for his misconduct in **Chesson**, misconduct similar to the misconduct in the **Stine** matter. ***Id.*** at p. 4. The majority's unexplained decision here to impose a public censure for both the **Chesson** and the **Stine** matters effectively means that respondent is receiving no additional discipline for the **Stine** misconduct, misconduct similar to that for which he previously received the benefit of a deferred recommendation of discipline. ***Id.***[3]

Cases can serve as guidelines in succeeding cases in determining what represents an appropriate sanction. See, e.g., **In re: Ellender**, 09-0736 (La. 7/1/09), 16 So.3d 351 (comparing the facts in that case to those in two previous disciplinary proceedings in reaching a conclusion as to the appropriate sanction). The record of this proceeding will become public in accordance with Louisiana Supreme Court Rule XXIII § 30(e). Even if, as a consent sanction, it has limited precedential value, the

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[3] To the extent that a short footnote in the per curiam suggests that the public was made aware of this disciplinary proceeding prior to the November election in which respondent was elected to the Third Circuit Court of Appeal, that fact should have no bearing on this court's role in deciding the appropriate discipline to impose. This is true for at least two reasons. First, the complaint that was made available to the public contained no information about the **Chesson** matter; and second, there are many factors at issue in an election, factors which have no bearing on our decision to impose discipline for admitted misconduct.

Louisiana Supreme Court Rule XXIII, § 23 provides that "once the Commission files a notice of hearing ... and the respondent judge either files an answer or the time for filing an answer has expired, proceedings before the Judiciary Commission and its hearing officers in the matter shall be open to the public ... and the pleadings, orders, and evidence filed into the record of the proceedings shall be public record ...." In this case, the notice of hearing in the **Stine** matter was filed on July 5, 2022, but did not become public until October 11, 2022, when respondent filed his answer. Respondent attempted to obtain an extension of time to file his answer which would have resulted in the **Stine** charges remaining confidential until after the November 8, 2022 election, but the Judiciary Commission ultimately rejected that effort, resulting in the charges being made public on October 11, 2022. Notably, the only charges which became public on that date related to the **Stine** matter. The **Chesson** matter, which was subject to the provisions of the Deferred Recommendation of Discipline Agreement, has remained confidential at all times prior to the release of this per curiam. Nevertheless, the majority rejected the original consent discipline agreement, choosing to propose an unusually lenient consent agreement instead.

result here sets a potentially dangerous precedent from which I must respectfully dissent.