

# SUPREME COURT OF LOUISIANA

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## ORDER

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Acting in accordance with Article V, Sections 1, 5 and 25 of the 1974 Louisiana Constitution, and the inherent power of this Court, and considering the need to amend the effective date of the Order dated May 9, 2016,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

Louisiana Supreme Court Rule XXIII is repealed and reenacted to read as follows:

### **RULE XXIII. THE JUDICIARY COMMISSION**

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

Under authority of Section 25 of Article V of the Constitution creating the Judiciary Commission and authorizing this Court to adopt rules pertinent thereto, the following shall be applicable to all complaints, inquiries, investigations, hearings, and proceedings before the Judiciary Commission.

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

In this rule, unless context or subject matter otherwise requires:

- (a) 'Chair' includes the Acting Chair;
- (b) 'Commission' means the Judiciary Commission;
- (c) Unless otherwise indicated, 'counsel' means the counsel designated by the Commission to gather and present evidence before the Commission or before a hearing officer with respect to the allegations of judicial misconduct or disability concerning a judge;
- (d) 'Discipline' means censure, suspension with or without salary, removal from office, or involuntary retirement; with respect to a mayor who performs judicial functions, 'discipline' means censure or suspension with salary from the performance of judicial functions.
- (e) 'Hearing officer' means any person designated by the Supreme Court pursuant to Section 29(a) of this rule to hear and report to the Commission.
- (f) 'Judge' means a justice or a judge of a court of this state, including a commissioner, a magistrate, a justice of the peace, and a mayor who performs judicial functions;
- (g) 'Shall' is mandatory and 'may' is permissive; and
- (h) The masculine gender includes the feminine gender.

#### **Section 3. Complaints, Inquiries, and Investigations.**

- (a) (1) The Commission, upon receiving a complaint that is not obviously unfounded or frivolous, or conclusory or contradictory on its face, or disproved by the contents of or the attachments to the complaint, and that alleges facts indicating that a judge has

engaged in willful misconduct relating to his or her official duty, or willful and persistent failure to perform his or her duty, or persistent and public conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or conduct while in office which would constitute a felony, or that he or she has a disability that seriously interferes with the performance of his or her duties and said disability is or is likely to become permanent, or has violated the Code of Judicial Conduct, shall make a preliminary inquiry to determine whether further investigation of the allegations of judicial misconduct or disability is warranted. The Commission may make such preliminary inquiry on its own motion on the basis of information coming to the Commission's attention from sources other than a complaint, including but not limited to news reports (upon authorization by the Chief Executive Officer) or correspondence from persons with an ethical duty to report potential violations of the Code of Judicial Conduct or Article V, § 25(C) of the Constitution.

(2) An anonymous complaint may not be the subject of a preliminary inquiry unless it states facts, not mere conclusions, that can be independently verified and the Chair authorizes a preliminary inquiry to be made.

(3) Regardless of the source of the allegations, a preliminary inquiry is not required concerning allegations which solely criticize a judge's official decision-making or claim judicial error, unless the legal error was egregious, made in bad faith, or was part of a pattern and practice of legal error.

(4) The judge shall be notified of the preliminary inquiry, provided with a copy of the complaint or other document containing allegations of judicial misconduct or disability, or notified that the preliminary inquiry is made on the Commission's own motion, and shall be afforded a reasonable opportunity to respond to the preliminary inquiry.

If the Commission finds that further investigation is warranted after reviewing the judge's response to the preliminary inquiry, if any, the Commission may authorize an investigation to determine whether formally specified allegations of misconduct or disability should be filed and a hearing should be held on the question of whether judicial misconduct or disability has occurred and, if so, whether a recommendation of discipline or involuntary retirement is warranted.

(5) The judge shall be entitled to have the assistance of counsel at every stage of these proceedings.

(b) If an investigation is authorized, the judge shall be notified of the investigation, the issues being investigated, and the name of the person making the complaint, if any, or that the investigation is on the Commission's own motion, and shall be afforded reasonable opportunity in the course of the investigation to present such relevant and/or material matters as he or she may choose. During the investigation stage of the proceedings, the Office of Special Counsel may compel by subpoena the attendance of witnesses for questioning by the Office of Special Counsel and the production of books, papers, documents, and other evidence deemed relevant or material to the investigation. Except for good cause shown, a respondent judge who has given a sworn statement during an investigation shall be entitled to a copy of the judge's sworn statement from the Office of Special Counsel, upon request to that office and at the judge's cost.

(c) If, in the opinion of a majority of the Commission, the preliminary inquiry or investigation does not disclose sufficient cause to warrant further proceedings, none shall be had, and the judge and the complainant shall be so notified.

(d) Upon the affirmative vote of a majority of the Commission, and in an effort to expeditiously resolve matters that the Commission has determined do not warrant further proceedings and to assist the judge in avoiding conduct or practices that may give rise to future ethical violations, the Commission may include in such notice to the respondent judge:

(i) a reminder concerning certain provisions in the Code of Judicial Conduct for future guidance, despite finding no ethical violation in the present matter; or

(ii) a caution that the Commission regarded the judge's conduct as an ethical violation but did not consider it to be serious enough to warrant further proceedings, and mitigating factors are present (such as where the judge was new

to the bench when the conduct occurred, or where the judge has acknowledged that the conduct was improper and has taken steps to prevent a recurrence, or where the judge has limited or no prior history before the Commission); or

(iii) an admonishment that the Commission regarded the judge's conduct as either a clear ethical violation, regardless of whether mitigating factors are present, or as an ethical violation without mitigating factors present, but did not consider it to be serious enough to warrant further proceedings.

Any such caution or admonishment is not considered discipline, but may be referenced in any subsequent proceeding before the Commission in accordance with Section 3(e) of this rule.

If the Commission proposes to close the file with a caution or an admonishment after an inquiry but prior to conducting an investigation, or after an investigation, the judge shall be notified in writing of the proposed disposition and of the right to consent or object within fourteen days of receipt of the notice. Failure of the respondent judge to respond within fourteen days after written notice shall be deemed consent. If within fourteen days the judge responds that he does not consent to the issuance of the caution or admonishment, the Commission will either (1) close the file with a reminder, or (2) continue to the next stage of the proceedings, including an investigation, or the issuance of a notice of hearing as provided for in Section 4 of this rule.

The right of a judge to accept or object to a proposed caution or admonishment shall be prospective only and shall not apply to cautions or admonishments issued before the effective date of this amendment.

(e) Closed files of prior proceedings concerning a judge may be referred to by the Commission at any stage of the current proceedings. In cases in which a notice of hearing is filed, the notice of hearing may contain allegations relating to the Commission's closure of files involving the respondent judge with either a caution or an admonishment as part of the judge's prior history before the Commission. The Office of Special Counsel may present evidence of the Commission's closure of files involving the respondent judge with a caution or an admonishment at the hearing before a hearing officer, or before the Commission if no hearing officer is appointed, for consideration by the Commission in deciding whether to make a recommendation of discipline, and by this Court if a recommendation of discipline is made. However, from the July 1, 2016, effective date of this amendment, unless the caution or admonishment was issued after a formal hearing, a Deferred Recommendation of Discipline Agreement (DRDA), or after the dispensation of a hearing before a hearing officer pursuant to Section 29(g) and (h), the cautions and admonishments issued before July 1, 2016, as well as the underlying findings that led to the cautions or admonishments, will not be used for any purpose by the Commission and will not be forwarded to the Supreme Court for consideration regarding a subsequent disciplinary matter.

(f) During any stage of a proceeding before the Commission, either before or after the filing of a notice of hearing as provided for in Section 4 of this rule, the Commission may, in its discretion, consider referring the matter to the Judges and Lawyers Assistance Program.

If the Commission is in favor of such a referral, the Commission shall notify the judge in writing of the opportunity for diversion. If the judge agrees to the diversion, the form of diversion will be worked out among the Judges and Lawyers Assistance Program, counsel to the Commission (Special Counsel and/or Commission Counsel), and the judge. The judge will be required to sign a written contract outlining the nature and extent of diversion. In the event of an unsuccessful diversion, the matter will be referred back to the Commission for further action. If in the course of fulfilling a diversionary contract, violations of the ethical rules contained in the Code of Judicial Conduct or Article V, § 25(C) of the Constitution are discovered, the Commission shall be notified, the contract may be nullified, and if so, the matter will be referred back to the Commission. A diversion contract may be reinstated or new terms added for good cause shown and with the consent of the judge.

#### **Section 4. Formal Proceedings.**

(a) After the investigation has been completed, if the Commission concludes that there is probable cause to believe that a violation of the Code of Judicial Conduct sufficiently serious to warrant a recommendation of discipline has occurred, or that there are grounds for judicial

discipline or involuntary retirement under Article V, § 25(C) of the Constitution, a hearing should be instituted. The Commission shall, without delay, specify the allegations and provide a written notice to the judge advising him or her of the institution of adversarial proceedings to determine whether judicial misconduct or disability has occurred and, if so, whether there is cause for further action. The specified allegations of judicial misconduct or disability must be proven by clear and convincing evidence. Such proceedings shall be entitled:

BEFORE THE JUDICIARY COMMISSION OF LOUISIANA

IN RE: Judge \_\_\_\_\_

No. \_\_\_\_\_

(b) The notice shall specify in ordinary and concise language the ethical rules contained in the Code of Judicial Conduct or Article V, § 25(C) of the Constitution that were allegedly violated by the judge and the alleged facts upon which such alleged ethical violations are based. The judge shall be required to plead and answer within thirty days from the date of service of a copy of the notice of hearing. All pleadings shall be filed in an original, which shall be verified, and nine legible copies when the pleading relates to a matter to be decided by the Commission pursuant to Section 29(c) of this rule, or in an original and one legible copy when the pleading relates to a matter to be decided by the hearing officer pursuant to Section 29(c) of this rule.

(c) All exceptions, whether dilatory, declinatory, or peremptory, and the answer must be filed at one and the same time. If the judge should not appear or plead and answer within the time allowed, the Commission may, nevertheless, proceed.

(d) If the Commission shall be satisfied by investigation that the judge resides out of the state, or has departed from the state, or cannot, after due diligence, be found within the state, or conceals himself or herself to avoid service of citation, the Commission shall appoint an attorney at law to represent the judge, against whom all proceedings shall be carried on contradictorily, with the same effect as if the judge had been personally served. The amount of compensation for such service shall be fixed by the Commission.

**Section 5. Citations, Subpoenas, and Other Process Issued by the Commission.**

(a) During an investigation and before a notice of hearing is filed, notices, citations, subpoenas, and other process for compelling the attendance of witnesses for questioning by the Office of Special Counsel or the production of books, papers, documents, and other evidentiary matter, shall be issued in the name of the Commission by the Chair or the Chief Executive Officer (Judicial Administrator) or the Commission Counsel, at the request of the Special Counsel, when such notice, citation, subpoena, or other process is deemed relevant or material to an investigation.

(b) After a notice of hearing is filed, such notices, citations, subpoenas, and other process that are deemed relevant or material to a hearing or other proceeding shall be issued in the name of the Commission at the request of the Special Counsel or the judge, as follows:

- (i) by the hearing officer or the Hearing Officer Counsel when the notices, citations, subpoenas, or other process relate to proceedings before the hearing officer, or
- (ii) by the Chair, the Chief Executive Officer (Judicial Administrator), or the Commission Counsel, when the notices, citations, subpoenas, or other process relate to proceedings before the Commission.

(c) After formal allegations are specified and a notice of hearing is provided, the judge and the Commission are entitled to discovery to the extent available for civil proceedings. Within thirty days after the filing of a notice of hearing, the Office of Special Counsel shall provide to the judge open file discovery of all non-privileged information and evidence relating to the allegations contained in the notice of hearing.

(d) Throughout the duration of the formal proceedings, the Office of Special Counsel shall have an affirmative duty to provide to the judge, within a reasonable time after receipt of such information, information received by the Office of Special Counsel that is favorable to the judge

and is relevant and/or material to the allegations contained in the notice of hearing, even without a request for such information having been made by the judge.

#### **Section 6. Notice of Hearing Date.**

The Commission shall order a hearing to be held before the Commission or before a hearing officer, in accordance with Section 29 of this rule, concerning the allegations of judicial misconduct or disability contained in the notice of hearing. The Commission or the hearing officer shall set a time and place for hearing and shall give notice of the time and place for such hearing by service on the judge at least thirty days prior to the date set.

#### **Section 7. Hearing Place.**

Any hearing which the Commission or the hearing officer may order shall be held in any place that the Commission or the hearing officer finds most convenient, in any parish in the state, and the hearing may be adjourned from time to time or to any other place or other parish the Commission or the hearing officer may see fit, after giving due notice to the judge.

#### **Section 8. Appearance of the Judge.**

(a) At the time and place set for the hearing, the Commission or the hearing officer shall proceed with the hearing, whether or not the judge has filed an answer or appears at the hearing. The Special Counsel shall present the case in support of the allegations of misconduct or disability contained in the notice of hearing.

(b) The failure of the judge to answer or to appear at the hearing shall not, standing alone, be taken as evidence of the truth of the facts alleged to constitute misconduct or disability.

(c) The proceedings at the hearing shall be reported by suitable means.

#### **Section 9. Judge's Right to Defend.**

(a) After a notice of hearing has been filed, a judge shall have the right and reasonable opportunity to defend against the allegations contained in the notice of hearing by the introduction of evidence, to be represented by counsel, and to examine and cross-examine witnesses. He or she shall also have the right to the issuance of subpoenas for attendance of witnesses to testify or for the production of books, papers, documents, and other evidentiary matter.

(b) When a transcript of the testimony has been prepared, a copy thereof shall, upon request, be provided to the judge.

(c) If the judge is adjudged incompetent or if it appears to the Commission at any time during the proceedings that he or she is not competent to act for himself or herself, the Commission shall appoint a curator ad hoc unless the judge has a curator who will represent him or her. In the appointment of such curator ad hoc, preference shall be given, wherever possible, to members of the judge's immediate family. The curator or curator ad hoc may claim and exercise any right and privilege and make any defense for the judge with the same force and effect as if claimed, exercised, or made by the judge, if competent; and whenever this rule provides for serving or giving notice or sending any matter to the judge, such notice or matter shall be served, given, or sent to the curator or curator ad hoc.

#### **Section 10. Post Hearing Commission Action.**

If the Commission finds good cause, it shall recommend to the Supreme Court the discipline of the judge. The affirmative vote of a majority of the Commission is required for a recommendation of discipline of a judge or for dismissal of the proceedings. The failure or refusal of a judge to cooperate in an investigation, or the use of dilatory practices, frivolous or unfounded responses or arguments, or other uncooperative behavior may be considered by the Commission in determining whether or not to recommend discipline to this Court and may bear on the severity of the discipline actually recommended.

If, after a hearing, the Commission finds that a judge violated one or more provisions of the Code of Judicial Conduct or of Article V, § 25(C) of the Constitution but concludes that a recommendation of discipline is not warranted, the Commission is authorized to privately caution or admonish the judge upon the affirmative vote of a majority of the Commission. Any

such caution or admonishment is not considered discipline, but may be referenced in any subsequent proceeding before the Commission in accordance with Section 3(e) of this rule.

#### **Section 11. Commission Record.**

The Commission shall keep a record of all proceedings concerning a judge. The Commission's determination shall be entered in the record and notice thereof shall be served on the judge. In all proceedings resulting in a recommendation to the Supreme Court for discipline, the Commission shall prepare a transcript of the evidence and of all proceedings therein and shall make written findings of fact and conclusions of law with respect to the issues of fact and law in the proceedings. In its recommendation with the Supreme Court, the Commission shall include the Commission's vote, and any dissenting or concurring member shall be permitted to append to the Commission's recommendation a written dissent or concurrence. Unless for good cause shown, the dissent or concurrence shall not identify the Commission member(s) making the dissent(s) or concurrence(s).

#### **Section 12. Transmittal of Commission Recommendation.**

Upon making a determination recommending discipline of a judge, the Commission shall promptly file the original and seven copies of the recommendation certified by the Chair or Chief Executive Officer of the Commission, the transcript, the findings, and the conclusions, with the clerk of the Supreme Court who shall immediately serve the judge with notice of such filing, together with a copy of such recommendation, findings, and conclusions.

#### **Section 13. Post Hearing Evidence.**

Application for permission to file additional evidence may be filed by either party within ten days after the filing of the recommendations, transcript, findings, and conclusions with the clerk of the Supreme Court. The application shall be verified and shall specify the grounds on which the application is based, with certification of service of a copy of the application on the opposing party.

In those cases wherein this Court permits the introduction of additional evidence, the Court may, in its discretion, remand the case to the Commission and direct that the Commission receive the additional evidence. After the receipt of such additional evidence, the Commission shall re-examine the entire matter in the light of the additional evidence and redetermine the necessity for a recommendation to this Court.

#### **Section 14. Briefing for the Court.**

As soon as the record has been completed in this Court, the case shall be placed on the summary docket of this Court and set down for argument and submission in open court. The parties shall have the right to file briefs conforming with Rule VII of this Court. The briefs for the Commission shall be filed not later than twenty-one calendar days before the date fixed for argument and the briefs for the judge shall be filed not later than seven calendar days before the date fixed for the argument. Briefs for each party shall be accompanied by a certificate of the party filing the brief, or of the attorney representing the party, that a copy was delivered to the opposing party or his or her attorney.

#### **Section 15. Arguments by Special Counsel and Respondent Counsel.**

The Special Counsel for the Commission shall have the right to open and close the argument and the judge or his or her attorney shall have the right to answer the opening argument.

#### **Section 16. Citations, Subpoenas, and Other Process Issued by the Clerk of the Court.**

In any case forwarded to this Court by the Commission, such notices, citations, subpoenas, and other process as may become necessary shall be issued by the clerk of this Court or by one of his or her deputies.

#### **Section 17. Method of Service of Citations, Subpoenas, and Other Process.**

Whether issued by the Commission or by the clerk of this Court, or one of his or her deputies, such notices, citations, subpoenas, or other process may be served by certified mail, by a person designated by the Commission or the said clerk, or by the sheriff (civil sheriff in the Parish of Orleans) of the domicile or residence of the person to whom the subpoena or other process is directed, provided that personal service may be made by the sheriff of any parish in which the party to whom the subpoena or other process is directed may be found.

### **Section 18. Limits on the Number of Witnesses.**

Requests for the summoning of witnesses shall be made to the Commission or to the clerk of this Court, as appropriate. If the Court or the Commission has reason to believe in any case that the judge is abusing the privilege of summoning witnesses without advancing the costs, the Court or the Commission may put a limit upon the number of witnesses whom the judge may summon without advancing costs.

### **Section 19. Method of Taking Testimony.**

If a witness whose testimony is material to the cause resides out of the state, or is absent from the state, or resides out of the parish in which the hearing is to be held, or is unable to appear in person, the testimony of the witness may be taken according to the forms prescribed by law for the taking of such testimony in civil cases in the district courts of this state.

### **Section 20. Contempt.**

If any person shall fail to obey any notice, citation, subpoena, or process issued by the Commission or this Court, or if any other occasion shall arise for proceeding against any person for being in contempt of the authority of the Court or of the Commission, the Commission shall certify the fact to this Court, and thereupon the Court shall proceed to determine whether the party whose conduct is complained of is in contempt of the authority of the Commission and, if so, to punish the offending party for contempt of court.

### **Section 21. Rule-making Authority of the Commission.**

Rules of procedure for hearings before the Commission and for the conducting of the business of the Commission shall be as adopted and promulgated by the Commission insofar as such rules provide a full and fair hearing and provide for the orderly administration of the Commission's business and are consistent herewith.

### **Section 22. Calculation and Payment of Costs.**

(a) The Office of Special Counsel and the Hearing Officer Counsel shall each file an itemized cost statement with the Judiciary Commission in any case in which the Commission convenes a hearing. If there is no hearing due to stipulations, the Office of Special Counsel shall file an itemized cost statement with the Judiciary Commission. In cases where the Commission recommends the discipline of a judge, the Commission shall review counsel's cost statement(s) and shall recommend to the Court that all or any portion of the costs incurred by the Office of Special Counsel, as well as costs incurred by the hearing officer and/or the Commission, be taxed against the judge. The Commission's recommendation shall be included in the record filed in this Court in the form of an itemized cost statement. The Court, in its discretion, may tax all or any portion of the costs recommended by the Commission.

(b) A judge ordered to pay costs shall do so within thirty days of the date upon which the assessment of costs becomes final, unless a periodic payment plan has been approved by the Commission.

### **Section 23. Confidentiality.**

(a) (1) All documents filed with, and evidence and proceedings before the Judiciary Commission or its hearing officers are confidential. Confidentiality may not be waived by the respondent judge; however, the judge may request a waiver of confidentiality from the Supreme Court or the Commission in accordance with the provisions of this section. The record filed by the Commission with this Court and proceedings before this Court are not confidential.

Nothing in this rule prohibits the respondent judge or anyone other than a Commission member or a member of the Commission staff before the filing of a Recommendation of Discipline in the Supreme Court from making statements regarding the underlying facts or events that are the subject of a complaint filed with the Commission or a proceeding before the Commission.

(2) The Commission may provide documents, evidence, and information from confidential proceedings to entities or individuals in appropriate cases without this Court's approval, in accordance with Subsection (b) below.

(3) In the event a judge who has received notice of an anticipated Commission filing in accordance with Rule XV of the internal rules of the Commission moves in advance of the filing to place any or all of the anticipated Judiciary Commission filing under seal, the Judiciary Commission shall file under seal its recommendations, findings of fact and conclusions of law, the transcript of the proceedings, and exhibits. The filing shall remain under seal until such time as the Court has acted upon the judge's motion.

(4) The confidentiality provisions of the first paragraph of this subpart shall not be applicable to matters that are pending before the Commission when a judge retires or resigns from judicial office, and thereafter qualifies to run for another elective public office. When a retired or resigned judge qualifies for any elective office, the following documents and information in the custody of the Commission, relating to matters that were not disposed of by the Commission at the time of the judge's retirement or resignation, shall be subject to public disclosure: (i) any open or pending complaints filed against the judge; (ii) any response by the judge to the initial inquiry by the Commission to the pending complaint(s); (iii) any formal charges or notices of hearing authorized by the Commission; (iv) any answers and/or exceptions to the formal charges or notices of hearing; (v) any stipulations of fact that have been agreed to by Special Counsel and the judge and that have been approved by the Commission, if such approval is required; (vi) any joint recommendations with respect to legal conclusions and recommendations as to judicial discipline that have been accepted by the Commission; (vii) the transcript of any hearing before the Commission or the hearing officer; (viii) any evidence introduced at the hearing before the Commission or the hearing officer; and (ix) any written findings of fact and conclusions of law that are authored by the Commission or the hearing officer. The Commission's investigatory and deliberation materials, and the hearing officer's deliberation materials, shall remain confidential. This section applies only to matters that were pending before the Commission when a judge retired or resigned from public office; confidentiality shall be maintained as to all matters that had been disposed of or were closed by the Commission at the time of the judge's retirement or resignation.

(5) The confidentiality provisions of the first paragraph of this subpart shall also not be applicable to information about complaints or proceedings before the Commission concerning a particular judge disclosed by the judge on an application for professional liability insurance. Such information shall remain confidential and shall be accompanied by the following language: THE INFORMATION DISCLOSED ON THE FOLLOWING PAGE(S) IN RESPONSE TO QUESTIONS \_\_\_\_\_ OF THE APPLICATION IS CONSIDERED STRICTLY CONFIDENTIAL PURSUANT TO LA. S.C.T. RULE XXIII, SECTION 23, and LA. R.S. 44:10. THEREFORE, IT IS TO BE USED FOR UNDERWRITING PURPOSES ONLY AND CANNOT BE DISCLOSED TO ANYONE FOR ANY OTHER PURPOSE, INCLUDING ANY PUBLIC RECORDS REQUEST MADE PURSUANT TO LAW.

(b) None of the following actions permitted to be taken by the Supreme Court or the Commission shall be deemed a violation of confidentiality:

(1) After a notice of hearing is filed, the Supreme Court may, in its discretion, release confidential information upon a written request for a waiver by the judge.

(2) If public reports concerning a Commission proceeding result in substantial unfairness to the judge involved in the proceeding, including unfairness resulting from reports which are false or materially misleading or inaccurate, the involved judge may submit a proposed statement of clarification and correction to the Commission and request its issuance. The Commission shall either issue the requested statement, advise the judge in writing that it declines to issue the requested statement, or issue a modified statement.

(3) In any case in which the subject matter becomes public, through independent sources or through a waiver of confidentiality granted by the Supreme Court or the Commission pursuant to this subpart, the Commission may issue statements as it considers appropriate in order to confirm the pendency of the investigation, clarify the procedural aspects of the disciplinary proceedings, and explain the right of the judge to a fair hearing without prejudgment.



(4) If in connection with the selection or appointment of a judge, any state or federal agency seeks information or written materials from the Commission concerning that judge, information may be divulged in accordance with procedures prescribed by the Commission, including reasonable notice to the judge affected unless the judge signs a waiver of notice. If in connection with the assignment of a retired judge to judicial duties, any appropriate authority seeks information or written materials from the Commission about that judge, information may be divulged in accordance with procedures prescribed by the Commission, including reasonable notice to the judge affected unless the judge signs a waiver of notice. All information disclosed by the Commission pursuant to this provision remains privileged and confidential.

(5) The Commission may make otherwise confidential records of disciplinary proceedings available to:

(i) Law enforcement agencies acting within the scope of their lawful authority when confidential records relate to possible criminal misconduct. Nothing in this rule compels the Commission to make confidential records available without a subpoena or court order if the Commission chooses not to exercise the discretion granted in this rule to make those confidential records available.

(ii) The Judges and Lawyers Assistance Program, when the Commission refers a judge to that program in connection with a proceeding pending before the Commission. All information disclosed by the Commission pursuant to this provision shall remain confidential unless confidentiality is lost in some other manner, such as by the filing of a recommendation of discipline by the Commission with this Court.

(6) When the Commission receives information concerning a threat to the safety of any person or persons, information concerning such a threat may be provided to the person threatened, to persons or organizations responsible for the safety of the person threatened, and to law enforcement and/or any appropriate prosecutorial agency.

(7) With respect to any judge who is under consideration for judicial appointment or assignment by this Court, the Commission may provide confidential information to this Court in accordance with La. S.Ct. Rule XXXVII.

(8) If a judge who is the subject of confidential proceedings before the Commission is exonerated and wishes to seek reimbursement of attorney fees, costs, or other expenses associated with the Commission proceedings from public funds, the judge may submit a written request to the Commission for a waiver of confidentiality for that purpose, and such request will be forwarded to the Supreme Court for consideration. It is not a breach of confidentiality for a respondent judge to disclose information regarding a complaint to his or her attorney or private insurer. The confidentiality of such communications to an insurer shall be considered strictly confidential pursuant to La. S.Ct. Rule XXIII, Section 23 and Louisiana Revised Statute 44:10.

(9) The Commission may provide documents, evidence, and information from proceedings to the Louisiana Attorney Disciplinary Board in appropriate cases when approved by this Court. In such cases, the confidentiality provisions of La. S. Ct. Rule XIX, Section 16A shall be maintained.

#### **Section 24. Commission Chief Executive Officer.**

The Judicial Administrator is the Chief Executive Officer of the Judiciary Commission, and in that capacity shall perform such duties as prescribed by the Commission.

#### **Section 25. Judicial and Attorney Discipline.**

A judge permitted by law to 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.

## **Section 26. Reinstatement of Eligibility to Qualify for Judicial Office Following Removal.**

Any former judge who has been removed from office by the Supreme Court pursuant to La. Const. Art. V, § 25(C) cannot and is prohibited from qualifying to become a candidate for any judicial office until certified eligible by this Court. A judge who has been removed from office shall not be eligible to seek certification for eligibility to qualify for judicial office if (1) he or she was removed from office after being convicted of any felony or a misdemeanor involving moral turpitude, or after the Court has determined that he or she has engaged in conduct that would constitute a felony, whether or not there was a conviction, and (2) the Court states in its order of removal that the judge is permanently barred from seeking future judicial office. In the event the Court does not permanently prohibit the former judge from seeking future judicial office, the judge may, as provided hereafter, apply to the Judiciary Commission for a recommendation to the Court that the removed judge be declared eligible to qualify for judicial office.

(a) Not before and only after five years from the date the Court's order of removal became final, the former judge (hereinafter "respondent") may file a Petition for Reinstatement of Eligibility to Qualify for a Judicial Office (hereafter "the petition") with the Judiciary Commission of Louisiana. The petition shall contain the respondent's arguments why the reinstatement of eligibility is appropriate under this rule. The respondent bears the burden of proving his/her eligibility by clear and convincing evidence.

(b) The petition shall be filed under oath or affirmation under penalty of perjury and shall specify with particularity the manner in which the respondent meets the criteria hereinafter specified. Upon the filing of a petition, the proceeding is public. Commission and Special Counsel deliberations, as well as the deliberative and investigatory materials maintained by those entities, remain confidential. The Court shall seal the record of the proceedings as it relates to medical records of the respondent, and may seal the record of the proceedings for any other compelling reason, in the interest of justice.

(c) At the same time the respondent files a Petition for Reinstatement of Eligibility to Qualify for a Judicial Office, the respondent shall also publish a notice of the petition in the official journal of every parish in the election district from which the respondent was elected prior to his/her removal. The notice shall inform the public about the petition and shall request that any individuals file notice of their opposition or concurrence with the Judiciary Commission within thirty days. The notice shall include the mailing address and telephone number of the Judiciary Commission.

(d) If the respondent was removed wholly or partially on the basis of a disability and/or impairment, including an addiction to alcohol or drugs, the respondent shall disclose to the Commission the name of each and every psychiatrist, psychologist, physician, hospital, and other institution by whom or in which the respondent has been examined or treated since the date his or her removal from judicial office became final. The respondent shall furnish written consent to the Judiciary Commission for the release of information and records relating to the disability, addiction, or other condition, if requested by the Judiciary Commission. If it deems necessary, the Judiciary Commission may order and the respondent shall undergo a physical and/or mental evaluation by an appropriate professional of the Judiciary Commission's selection, the report of which shall be delivered to the Commission prior to a hearing on the petition.

(e) In formulating a recommendation regarding the respondent's petition, the Judiciary Commission may consider the following non-exclusive factors and/or conditions, and the respondent's compliance with the applicable factors and/or conditions:

- (1) If the respondent's removal from office was based, in whole or in part, on his or her conviction of a misdemeanor, evidence regarding the disposition and/or completion of the related sentence;
- (2) If the respondent's removal was based, in whole or part, on his or her conviction of a felony (and the Court has not ordered permanent removal, as provided for above), evidence regarding the disposition and/or completion of the related sentence or any pardon;

(3) Any pending criminal charge, whether misdemeanor or felony, shall be fully disclosed, and the respondent shall explain why the pending charge(s) should not result in a denial of his/her petition;

(4) Where alcohol or drug abuse formed the basis for the respondent's removal, in addition to the requirements of Section 26(d), the respondent shall not be reinstated as eligible to qualify unless he or she has:

(i) pursued appropriate rehabilitative treatment and been certified by a reputable care facility to be drug or alcohol free, as applicable, and in compliance with the care plan established for the respondent;

(ii) remained alcohol or drug free, as applicable, for at least one year; and

(iii) has demonstrated that he or she is likely to continue to abstain from alcohol or other drugs, as applicable.

In assessing this criterion, the Judiciary Commission may consult with and rely upon expert opinions and/or reports of the Judges and Lawyers Assistance Program;

(5) The respondent's past and current status with the Louisiana State Bar Association, if applicable, including meeting all requirements imposed upon lawyers with regard to continuing legal education and payment of all dues and assessments;

(6) The respondent has fully complied with the terms and conditions of all prior disciplinary orders or agreements. In this regard, the respondent shall certify that there are no pending complaints, investigations, or formal charges filed against him or her with the Office of Disciplinary Counsel or the Attorney Disciplinary Board. In the event any complaint(s), investigation(s), or formal charge(s) are pending against the respondent, such matters shall be fully disclosed. The respondent shall explain why the pending complaint(s), investigation(s), or charge(s) should not result in the denial of the petition. Further, the respondent shall set forth and describe in detail any such complaints, investigations or formal charges lodged or undertaken against him or her with respect to lawyer conduct, but which have been closed or resolved during the time since the judge's removal from office and explain why such matters should not result in a denial of the petition;

(7) Notwithstanding the conduct for which the respondent was removed, whether the respondent has the requisite honesty and integrity to hold judicial office;

(8) Whether the respondent has timely paid all costs cast against him or her by the Court in connection with Judiciary Commission and/or lawyer disciplinary proceedings;

(9) If applicable, the respondent shall obtain a certification from the Client Assistance Fund that no payments have been made by the Fund to any of the respondent's clients. To the extent that Client Assistance Funds have been paid to qualifying clients, the respondent shall obtain a certification from the Fund that the Fund has been reimbursed in its entirety, or alternatively, that a payment plan is in effect which will result in reimbursement to the Fund. The Judiciary Commission may take into consideration whether or not the respondent's client has been made whole by either the respondent or the Client Assistance Fund; and

(10) Whether the respondent has corrected any problem or situation adverse to others that arose as the result of the misconduct which led to his or her removal, assuming the possibility of a remedy therefor.

(f) Upon the filing of the petition, the Judiciary Commission shall review the contents thereof and determine whether to investigate the factors bearing on the petition for eligibility to run for judicial office. If the Judiciary Commission deems necessary, the Commissioners shall conduct a hearing as soon as practical after conclusion of an investigation, if any. The Office of Special Counsel shall act under the direction of the Commission with respect to the investigation, if any, and hearing, if any, on the issues presented.

Within sixty days of the filing of the petition, the Commission shall advise the respondent in writing if it intends to investigate the matter and/or order a hearing. The Commission shall within sixty days after the conclusion of the investigation and/or hearing, or within sixty days after the filing of the petition if the Commission does not order an investigation and/or hearing, file its recommendation with this Court. The Court, in its discretion, may order oral argument on the Commission's recommendation.

(g) The Commission may recommend the assessment of hard costs upon the respondent as the members deem necessary. No reinstatement will become effective prior to the respondent's payment of costs assessed by the Court, upon recommendation of the Judiciary Commission.

(h) If the Court finds that the respondent has satisfied the criteria or has presented good and sufficient reason, this Court may deem the respondent eligible to qualify to run for judicial office and may issue written reasons therefor. Within thirty days of any Court decision reinstating the respondent's eligibility, the respondent shall file into the record of the Court, and serve upon the Judiciary Commission, an affidavit specifying that all assessed costs have been paid to the Judiciary Commission.

(i) A petition may be filed no more than once per calendar year and after the first filing, no sooner than one year from the date of the Court's decision denying respondent's previous petition. Following the denial of a petition, the Judiciary Commission may decline to make a further recommendation to the Court concerning the respondent's eligibility to run for judicial office unless the respondent submits substantial evidence not previously submitted to the Judiciary Commission for consideration in an earlier petition.

## **Section 27. Interim Disqualification.**

(a) **Recommendation.** The Judiciary Commission, without the necessity of a hearing, and upon determining that a judge who is subject to the jurisdiction of this Court:

(1) has been indicted or charged with a serious crime under state or federal law; or

(2) upon receiving substantial, credible evidence which establishes probable cause that a judge may have violated Article V, § 25(C) of the Constitution or may have committed a violation of the Code of Judicial Conduct and may pose a substantial threat of serious harm to the public or the administration of justice;

may recommend to the Court that the judge be immediately disqualified from exercising any judicial function, pending further proceedings before the Judiciary Commission or the Court. For the purpose of this rule, the term "serious crime" means

(i) any felony; or

(ii) any other lesser crime that reflects adversely on the judge's honesty, trustworthiness, or fitness as judge.

(b) **Evidence; service.** The Judiciary Commission shall append to the recommendation it files with the Court the evidence and documents which, in its view, justifies the interim disqualification. The recommendation for interim disqualification shall be personally served upon the respondent judge. Within seven days of service of the recommendation for interim disqualification, the respondent judge may file with the Court an opposition to the recommendation and append relevant rebuttal evidence. A copy of the opposition shall be filed with the Judiciary Commission.

(c) **Order.** Upon consideration of the recommendation of interim disqualification and any opposition, the Supreme Court may enter an order pursuant to La. Const. Art. V, § 25(C) immediately disqualifying the judge from exercising any judicial function, pending final disposition of the disciplinary proceeding predicated upon the conduct causing the harm; deny the motion; or take any other action it considers appropriate.

(d) **Confidentiality.** In the event the recommendation for interim disqualification is filed before a recommendation of discipline is filed with the Court, the recommendation for interim disqualification shall be filed under seal. In the event the Court orders the interim disqualification of a judge, the Commission's recommendation, any opposition, and the Order of Interim Disqualification shall be matters of public record, unless otherwise ordered by the Court.

(e) **Dissolution of Interim Disqualification.** A judge who has been disqualified pursuant to this section may move the Court for a dissolution of the order of disqualification upon a showing of relevant facts indicating a material change in circumstances relating to the Order of Interim Disqualification. A copy of the motion for dissolution shall be filed with the Judiciary Commission. The Commission may file an opposition to the motion, or a concurrence in the motion, within seven days of filing. Following receipt of the response or expiration of the time period for receiving a response from the Commission, the Court shall consider and act upon the motion.

(f) **Effect on later Commission or Court Action.** Interim disqualification of a judge shall not preclude action by the Commission or the Court on the same conduct or charge that formed the basis for the interim disqualification. Acquittal, dismissal, or conviction of the criminal charge shall not preclude proceedings by the Commission or the Court on the conduct that formed the basis for the charge.

Any period of interim disqualification imposed under this section shall not be applied to reduce any period of suspension which may ultimately be imposed by the Court, unless the Court so directs in its final order imposing discipline.

(g) **Interim Disqualification by Consent.** A judge against whom any crime has been charged, or against whom allegations of misconduct have been or may be made, may at any time move the Court to enter an order of interim disqualification from the exercise of judicial functions, with or without pay, pending final disposition of judicial disciplinary proceedings. A copy of the motion shall be filed with the Judiciary Commission. The Commission may file a concurrence or other response with the Court within seven days of the filing. Thereafter, the Court shall consider and act upon the motion.

## **Section 28. Practice Limitation During Suspension or Disqualification.**

Any judge who is constitutionally or statutorily prohibited from practicing law, and who has been suspended or disqualified pursuant to an order of this Court, shall not practice law during the period of time in which the judge has been suspended or disqualified.

## **Section 29. Hearing Officers.**

(a) **Designation; authority.** This Court may designate no less than ten, and no more than thirty, sitting, former, or retired judges to serve as hearing officers to hear and report to the Commission in accordance with the provisions of Sections 5 through 9, 11, and 31 of this rule. The Court may also designate to serve as hearing officers sitting, former, or retired judges who are serving, or have served, on courts of limited jurisdiction, such as city courts and juvenile courts. Justices of the peace may not be appointed as hearing officers. Such hearing officer shall be empowered to conduct hearings, administer oaths or affirmations, subpoena witnesses, compel their attendance, examine them under oath or affirmation and require the production of any books, records, documents, or other evidence that the hearing officer may deem relevant or material to the subject of the hearing.

Except as provided hereafter, in each case wherein the Commission authorizes the filing of a notice of hearing concerning the alleged misconduct or disability of a judge, a hearing officer shall be appointed to commence proceedings, as more fully set forth below.

(b) **Random Allotment and Venue.** From the hearing officer designees of the Court, the Commission shall select a hearing officer for each case by random allotment to conduct hearings pursuant to Sections 5 through 9 and 11 of this rule. The random allotment procedure shall not, however, include any designee from the Supreme Court district where the respondent judge presides. Furthermore, in order to help insure that the hearing officers receive an equivalent number of cases, any designated hearing officer to whom a case has been randomly allotted shall not be included in the next four case allotments in which the hearing officer is eligible to serve.

The venue of hearing officer proceedings and any hearing to be conducted by a hearing officer shall be governed by Section 7 of this rule.

(c) **Exceptions and motions; hearing officer bound by Code of Judicial Conduct.**

(1) The Commission shall decide all exceptions and the following motions:

- (i) any motion which would be determinative of the merits of the case;
- (ii) a motion to confirm or disaffirm the findings of the hearing officer;
- (iii) a motion made prior to the appointment of the hearing officer, except that the Commission may refer such motion to the hearing officer when such referral is not inconsistent with the other provisions of this section; and
- (iv) a motion to proceed without appointing a hearing officer for a particular proceeding, as more fully set forth below.

(2) In each case where the Commission is designated to decide a motion, such decision shall be made by a majority of the Commission at the next regularly scheduled meeting, except that in cases where the hearing officer notifies the Commission of a motion which he or she believes should be decided expeditiously, the hearing officer shall notify the Commission in writing through its Chief Executive Officer or Commission Counsel, who shall poll the Commission for disposition on the motion.

(3) The designated hearing officer may decide all other motions, subject to the hearing officer's right to request that for good cause, the Commission decide a motion other than those described in Subsection (c)(1). All motions shall be in writing and there shall be no absolute right to oral argument, which shall only be had in the discretion of the hearing officer, as to motions to be heard by him or by her, or of the Chair of the Commission as to motions to be decided by the Commission.

(4) Motions for the disqualification or recusal of a hearing officer are to be made to the designated hearing officer within ten calendar days of the parties' receipt of notification of the appointment of the hearing officer. If the hearing officer deems the recusal motion meritless, he or she shall provide written reasons therefor and the motion shall be automatically referred to the Commission for decision at the next regularly scheduled meeting, except where the respondent judge or the Office of Special Counsel withdraws the request for disqualification after reviewing the hearing officer's reasons. So long as the motion is pending, all proceedings will be stayed until the Commission has rendered its decision.

(5) In deciding a motion, the hearing officer shall not engage in *ex parte* communications with the Special Counsel or with the respondent judge and his or her counsel. In this regard, as to exceptions, motions, and all other matters, during the time the hearing officer is serving with regard to notices of hearing filed, the hearing officer shall be subject to the Code of Judicial Conduct. Retired and former judges who serve as hearing officers shall be subject to the Code of Judicial Conduct to the same extent that the Code applies to retired judges.

(d) **The conduct of hearings.** The hearing officer shall set a prompt hearing date; regulate the course of the hearing; make appropriate rulings; set the time for adjourned or continued hearings and fix the time for filing proposed findings, briefs, and other documents; and shall have such other authority as specified by the Commission, not inconsistent with the provisions of this rule.

The respondent judge who is the subject of the hearing, and the Special Counsel, shall be afforded a reasonable opportunity to present to the hearing officer written argument on issues of law and fact, including but not limited to briefs and/or proposed findings of facts and conclusions of law. The respondent judge and the Special Counsel may file briefs and/or proposed findings with the hearing officer at the office of the Commission no later than thirty days after their receipt of the transcript of the hearing. For good cause, the hearing officer may grant a reasonable extension or may shorten the period.

(e) **Proposed findings of fact and conclusions of law.** The hearing officer shall submit a report to the Commission with proposed findings of fact and conclusions of law. The Commission shall review the report de novo, and may on its own motion remand the case to the hearing officer for the taking of further evidence on any issue presented by the notice of hearing. No recommendation shall be made with respect to a sanction to be imposed by the Commission.

The hearing officer shall endeavor to submit such report: (i) no later than thirty days after receipt of the briefs and/or proposed findings of fact and conclusions of law referred to in subsection (d) of this section; or (ii) no later than thirty days after the failure of the respondent or the Special Counsel to file such brief and/or proposed findings of fact and conclusions of law within the time prescribed in subsection (d) of this section. A copy of the hearing officer's report shall be sent to the respondent judge and the Special Counsel.

**(f) Procedure to consider hearing officer's proposed findings of fact and conclusions of law.**

(1) The Commission shall consider the hearing officer's report and/or agreed statement of uncontested material facts and shall provide reasonable opportunity for the submission of briefs and oral argument by the respondent judge and the Special Counsel with respect to such report or agreed statement of uncontested material facts and with respect to possible sanctions. The Office of Special Counsel shall file an original and nine copies of any brief submitted to the Commission. Thereafter, the respondent judge shall file an original and nine copies of any reply brief submitted to the Commission.

(2) The respondent judge may request an appearance before the Commission to make a statement about the case, and the Commission, on its own motion, may require the respondent judge to appear to answer questions about the allegations pending and/or about the hearing officer's report or about any stipulations of fact. The Commission may require any witness who appeared before the hearing officer to appear before the Commission for questioning. The respondent judge or his or her counsel and the Office of Special Counsel may ask questions of the judge and any other witnesses who appear before the Commission, but such questioning shall be limited to the subject matter of the examination by the Commission and shall not exceed the amount of time allocated for such questioning in the order notifying the parties of the proceedings before the Commission. Each side shall be given a set amount of time, as set forth in the order, to present an opening statement, a closing statement, or a combination of the two, and may choose how to allocate their time, subject to the discretion of the Chair to grant additional time as needed.

**(g) Stipulations.** Special Counsel to the Commission may enter into proposed stipulations of fact with the respondent judge and the judge's legal counsel as to some or all of the allegations contained in the notice of hearing. If the proposed stipulations relate to all factual allegations in the notice of hearing, they must be approved by the Commission, even if the case is pending before a hearing officer. If the proposed stipulations relate to some but not all of the factual allegations in the notice of hearing, the stipulations need not be approved by the hearing officer or the Commission.

**(h) Procedure to consider proceedings without appointment of a hearing officer.**

(1) If the respondent judge and the Special Counsel have presented for approval a statement of uncontested material facts (as to all factual allegations contained in the notice of hearing) and such stipulation has been accepted, a motion to dispense with the services of a hearing officer shall be granted, reserving to the Commission the decision whether to permit or require the respondent judge to address the Commission in person. The parties may further present a stipulation as to the relevant law, or if there is a failure to agree, each side may brief such law. If the parties have presented for approval a statement of uncontested facts as to less than all of the alleged factual allegations, the motion to dispense with appointment of a hearing officer shall be made by majority vote of the Commission, which may be decided at a meeting or by poll voting.

(2) If for any reason there is no qualified person designated to serve as hearing officer and such circumstance persists for a period of thirty days after the filing of a notice of hearing in a particular case, the Commission shall proceed to hear the case without the benefit of a hearing officer.

**(i) Confidentiality.** The proceedings before the hearing officer shall remain confidential, and such confidentiality may not be waived by the respondent judge.

(j) **Remuneration.** A retired or former judge who serves as a hearing officer shall be entitled to remuneration for his or her services in the same manner as the Court compensates retired judges.

### **Section 30. Discipline by Consent.**

(a) **Joint Motion.** At any time in the disciplinary process before the Commission files a recommendation of discipline in this Court pursuant to Sections 10 and 12 of this rule, a respondent judge and the Commission may file a Joint Motion for Discipline by Consent. The joint motion shall be filed under seal with the Court. In the event a notice of hearing has been filed, notice of the filing of the joint motion shall be given to the hearing officer to which the matter has been assigned, and all proceedings shall be stayed, pending disposition of the motion. The joint motion shall include stipulations of fact, conditional admissions of rules violated, the mental elements involved, the harm occasioned by the respondent judge's conduct, and the existence of any aggravating and mitigating factors. The judge shall acknowledge in the joint motion that he or she consents to the agreed upon discipline. In the joint motion, the parties shall stipulate to the following:

(1) The judge's consent is freely and voluntarily rendered; the judge is not being subjected to coercion or duress; the judge is fully aware of the implication of submitting the consent; and

(2) The judge consents because the judge knows that if a notice of hearing predicated upon the matters under investigation were filed, or if the pending proceeding were litigated, the judge could not successfully defend against them.

The parties may enter into any other agreements appropriate under the facts of the case.

(b) **Memorandum in Support of Consent Discipline.** The respondent judge and the Commission shall append to the joint motion a memorandum that provides support, including relevant jurisprudence, where applicable, justifying imposition of the recommended discipline.

(c) **Discretionary, Sealed Memorandum from Judiciary Commission.** Within ten days of the filing of the joint motion for consent discipline, or upon request of the Court, the Commission may file a supplemental memorandum, under seal, further explaining why it would be appropriate for the Court to accept the consent discipline. Notwithstanding any other provision of law or court rule, this sealed memorandum shall be available only to the Court, shall remain confidential, and shall not be provided to the respondent judge regardless of whether the discipline by consent is accepted or rejected by the Court.

(d) **Discontinuance of Jurisdiction.** Approval of the consent discipline by the Court shall divest the hearing officer and the Commission of further jurisdiction over the allegations of misconduct contained in the notice of hearing and no report need be prepared in such cases.

(e) **Order of Discipline.** If the Court determines consent discipline is appropriate, the Court shall enter an order disciplining the judge by consent. In the event the Court enters such an order, the pleadings filed with the Court shall become public, unless otherwise ordered by the Court. However, any sealed memorandum provided to the Court by the Commission in accordance with subpart C shall remain confidential, shall be available only to the Court, and shall not be provided to the respondent judge.

(f) **Rejection or Conditional Rejection of Consent Discipline.**

(1) **Conditional Rejection.** If the Court disagrees with the requested discipline, the Court can conditionally reject the requested discipline and allow the parties to submit within thirty days a Revised Motion and Memorandum in Support of Consent Discipline, offering a different discipline than the one contained in the original request. If the parties submit a revised request for consent discipline, the Court shall determine whether consent discipline is appropriate. However, if no revised Motion and Memorandum are submitted within the thirty-day period, the Motion and Memorandum in Support of Consent Discipline shall be rejected and the matter shall be remanded to the Commission for further proceedings.

(2) **Complete Rejection.** If the requested discipline is rejected by the Court, the joint motion and any conditional admissions shall be considered withdrawn. In this event, any



conditional admissions made in the joint motion cannot be used against the respondent in any subsequent proceedings. The joint motion and all other filings and materials shall remain sealed and shall not be disclosed or made available for use in any other proceeding, except upon order of the Court. The Court order in this instance shall be a matter of public record, but the respondent judge shall not be identified.

### **Section 31. Deferred Recommendation of Discipline Agreement.**

After a notice of hearing has been filed, the Commission may enter into a Deferred Recommendation of Discipline Agreement (DRDA) with the respondent judge. A DRDA must contain the following provisions and may contain such other provisions as the Commission deems appropriate:

- (a) The judge must admit to some or all of the ethical violations alleged in the notice of hearing, agree to a private admonishment for such conduct, and agree to take specified remedial steps during the term of the DRDA to address any harm caused by the judge's conduct and to prevent a recurrence of such conduct. The judge must also consent to having the Commission recommend a specified type of discipline to this Court if the Commission determines by clear and convincing evidence, after a hearing before a hearing officer or the Commission, as decided by the Commission, that the judge did not comply with the terms and conditions of the DRDA.
- (b) The Commission must agree to defer making a recommendation of discipline to this Court during the term of the DRDA provided its terms and conditions are complied with.

If the Commission makes a recommendation of discipline in a case in which a DRDA has been executed, this Court is not bound to impose the type of discipline referenced in the DRDA and may impose any discipline authorized by the Louisiana Constitution, or no discipline at all.

Before a hearing has been held on the allegations contained in a notice of hearing, the respondent judge may request, or the judge and the Special Counsel may jointly request, a DRDA within the time specified for such requests in the case management order. The request may be submitted in the form of a pleading or by letter to the Commission, in care of Commission Counsel, with a copy to the Special Counsel, and shall include a detailed statement of the terms and conditions of the proposed DRDA. If the Special Counsel has not joined in the request, the request shall also contain a statement as to the Special Counsel's position on the request, if known to the judge. Unless the request was made jointly by the judge and the Office of Special Counsel, the Commission shall grant the Office of Special Counsel an opportunity to respond to the request.

After a hearing has been held on the allegations contained in a notice of hearing and the judge has appeared before the Commission for further proceedings in accordance with Section 29(f) of this rule, the Commission may, in its discretion, propose to the judge that the case be resolved with a DRDA.

In deciding whether to grant a DRDA, the Commission may consider any factors it deems appropriate, including but not limited to the following:

- (1) The nature and seriousness of the misconduct;
- (2) The respondent judge's length of service on the bench;
- (3) The nature of the procedures or steps the judge has taken, or proposes to take, to correct the problem and avoid a recurrence of it;
- (4) Whether the misconduct was private or public;
- (5) Whether the judge received any private benefit as the result of engaging in the ethical misconduct; and
- (6) Whether the judge has previous proven misconduct.

The fact that a DRDA has been executed and the contents of the DRDA shall remain confidential unless the judge fails to comply with the terms and conditions of the DRDA, in which case the DRDA shall become a public record upon the matter being lodged with this Court. If the conditions of the DRDA are satisfied by the judge and the DRDA expires according to its terms,

the underlying conduct and the fact that an admonishment was given pursuant to a DRDA may be referenced in another matter involving the judge in accordance with Section 3(e) of this rule.

**Section 32. Immunity.**

Members of the Judiciary Commission, duly appointed hearing officers for the Commission, the Chief Executive Officer of the Commission, Special Counsel, Commission Counsel, Hearing Officer Counsel, and members of their staffs shall be absolutely immune from civil suit for all conduct in the course of their official duties.

**Section 33. Limitations on Former Attorney Members.**

A former attorney member of the Commission shall not, for a period of two years following the end of his or her term as a member of the Commission, appear before the Commission as counsel for a judge whose conduct has been placed at issue in Commission proceedings.

This rule change shall become effective on July 1, 2016, and shall remain in full force and effect thereafter, until amended or changed through future orders of this Court.

New Orleans, Louisiana, this \_\_\_\_\_ day of May, 2016

FOR THE COURT:

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Bernette Joshua Johnson, Chief Justice