



Theresa Ann McCarthy  
Second Deputy Clerk of Court

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 recommendation of the Judiciary Commission of Louisiana and the need to amend Rule XXIII of the Rules of this Court,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Section 2(f) is hereby amended as follows:

**Section 2. Definitions.**

(f) 'Judge' means a justice or a judge of a court of this state, including a commissioner, a magistrate, a justice of the peace, judicially appointed hearing officers, and a mayor who performs judicial functions;

2. Sections 3(a)(1), 3(a)(2), and 3(a)(4) are hereby amended as follows:

**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. If the Chief Executive Officer declines to authorize a preliminary inquiry regarding a news report, subsequent review of the news report occurs pursuant to the Commission's internal rules.

(2) An anonymous complaint is a complaint submitted without a name and contact information. 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. If the Chair declines to authorize a preliminary inquiry, the complaint is processed pursuant to the Commission's internal rules.

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(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 following a preliminary inquiry, 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.

3. Section 4(b) is hereby amended as follows, and Section 4(e) is hereby added as follows:

**Section 4. Formal Proceedings.**

(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 three 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.

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(e) **Expedited Matters.** Inquiries and investigations of allegations involving disabilities, impairments, or possible criminal conduct should, to the extent possible, be handled on an expedited basis consistent with Commission procedures, and the Commission should attempt to resolve the matter or file a recommendation with the Supreme Court within twelve months of receiving the complaint or report concerning the disability, impairment, or possible criminal conduct. Matters involving judges who have been disqualified by this Court from exercising any judicial function pending further proceedings before the Commission or this Court, pursuant to Section 27 of this rule, shall be expedited. To expedite a matter, the Commission or hearing officer may shorten any deadlines or delays provided in any other sections of this rule; may limit or prohibit extensions, continuances, and/or stays; and may require status reports regarding the matter from the parties and/or the hearing officer.

4. Section 8(d) is hereby added as follows:

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

(d) Witnesses, other than the respondent judge, shall be excluded from the hearing room and from a place where they can hear the proceedings. On its own motion, the Commission or the hearing officer may, and on request of a party the Commission or the hearing officer shall, order any witness, including the respondent judge, to refrain from discussing the facts of the proceedings with anyone other than Special Counsel, the respondent judge's counsel, or the respondent judge when he is acting as his own counsel. Upon a showing of good cause, and in the interests of justice, the Commission or the hearing officer may exempt any witness from its order. Any such order shall expire at the conclusion of the hearing.

5. Section 17 is hereby deleted in its entirety and amended to read as follows:

**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 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.

6. Section 20 is hereby deleted in its entirety and amended to read as follows:

**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 Court or the Commission and, if so, to punish the offending party for contempt of court.

7. Sections 23(a)(1), 23(b)(4), 23(b)(8), and 23(b)(9) are hereby amended as follows, and 23(b)(10) is hereby added as follows:

**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. Moreover, once the Commission closes a file or files a notice of hearing, nothing in this rule shall prevent a complainant, respondent, or testifying witness in a Commission proceeding from disclosing or discussing the proceedings, subject to the right of the hearing officer or the Commission to issue an order in accordance with Section 8(d) of this rule. From the time a complaint is filed throughout the investigatory stage of the proceedings, complainants, respondents, and witnesses may not disclose or discuss the fact that a complaint was filed, the fact that testimony was given pursuant to Commission proceedings, or any information learned as a result of participating in such proceedings. All documents and evidence remain confidential if the Commission does not file a matter with the Supreme Court.

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

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(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. Further, 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 in connection with a judicial appointment. 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.CT. RULE XXIII, SECTION 23, and LA. R.S. 44:10. THEREFORE, IT IS TO BE USED FOR INTERNAL JUDICIAL APPOINTMENT CONSIDERATION ONLY AND CANNOT BE DISCLOSED TO ANYONE FOR ANY OTHER PURPOSE, INCLUDING ANY PUBLIC RECORDS REQUEST MADE PURSUANT TO LAW.

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(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. 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. When dual jurisdiction exists pursuant to Section 25, the Commission may communicate with the Office of Disciplinary Counsel to coordinate the handling of the matter and to discuss such substantive matters necessary to resolve any logistical and procedural issues without seeking a waiver of confidentiality. In these such cases, the confidentiality provisions of La. S. Ct. Rule XIX, Section 16A shall be maintained.

(10) The Commission may provide documents, evidence, and information from proceedings to the entity that appointed a Commission member when necessary to make a recommendation of

removal of that member to the appointing authority, pursuant to Section 34. In such cases, the appointing authority and its members shall maintain the confidentiality of any Commission documents, evidence, and information provided.

8. Section 25 is hereby deleted in its entirety and amended to read as follows:

**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. Where dual jurisdiction exists, the Commission may communicate with the Office of Disciplinary Counsel to coordinate the handling of a matter, to conduct joint investigative efforts, and to evaluate the findings and results of parallel disciplinary matters. Such communications may include the sharing of substantive information and documents necessary to resolve any logistical and procedural issues (including, but not limited to, whether to stay a matter or to allow one disciplinary proceeding to take priority), to prevent duplication of efforts and wasted resources, and to avoid inconsistent disciplinary results. Any information obtained by the Commission or the Office of Disciplinary Counsel through the sharing permitted by this Section may be communicated with members and staff within the respective entities but may not be shared with third parties. Such communications made pursuant to this Section do not violate Section 23 confidentiality, and the information remains confidential pursuant to Section 23 in all other respects.

9. Section 27(b) is hereby amended as follows, and Section 27(h) is hereby added as follows:

**Section 27. Interim Disqualification.**

(b) **Evidence; service.** The Judiciary Commission shall append to the recommendation it files with the Court the evidence and documents which, in its view, justify 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.

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(h) **Expedited.** Disciplinary proceedings involving judges who have been disqualified from exercising any judicial function under this Section, shall be expedited and shall be resolved by the Commission within six months, unless good cause is shown. It shall not be a

violation of Section 23 for the Commission to notify the Court, by filing an informational pleading under seal in the matter, that good cause has been established which may delay the proceedings of a matter brought under this Section.

10. Sections 29(c)(1), 29(e), and 29(h)(1) are hereby amended as follows, and Section 29(k) is hereby added as follows:

**(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;

(iv) a motion to proceed without appointing a hearing officer for a particular proceeding, as more fully set forth below;

(v) the Commission may on its own motion review any decision by a hearing officer that would substantially delay, impede, or prolong the resolution of the proceedings, including but not limited to the hearing officer's decision to grant a motion that indefinitely stays the hearing or continues the hearing without date when the basis for the motion is the Commission's impending loss of jurisdiction over the judicial officer; and

(vi) a motion to compel a hearing officer to discharge his or her duties.

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**(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 considered 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.

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**(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 decided by majority vote of the Commission and may be decided at a meeting or by poll voting.

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**(k) Commission Authority to Re-assign a Hearing Officer from a Case.** The Commission retains authority to ensure that a matter progresses toward resolution. The unwillingness or inability of a hearing officer to discharge his or her duties as hearing officer may be grounds for the Commission to re-assign the hearing officer. After receiving notice that the hearing officer is not sufficiently discharging his or her duties, the Commission will request a written explanation from the hearing officer regarding his or her handling of the matter. Based upon the submissions of the hearing officer, the Commission will then consider whether the hearing officer should be re-assigned during its next scheduled meeting or during a meeting specially called for that purpose. If the Commission determines that the hearing officer has failed to discharge his or her duties, the Commission may assign another hearing officer through random allotment pursuant to Section 29(b) or may hear the matter directly.

11. Section 34 is hereby added as follows:

**Section 34. Removal of Members of the Commission.**

A. A member may be removed from the Commission before the end of his or her term only if an event occurs that would have made him or her ineligible for the appointment or upon good cause found by the respective appointing authority.

B. If a member fails to discharge his or her duties, fails to comply with the rules governing the Commission, or otherwise engages in conduct that brings the Commission into disrepute (including, but not limited to, excessive absences from Commission meetings or violating



the confidentiality rule), the Chair or the Chief Executive Officer will consult the member regarding such offending conduct within ten days of receiving notice of the issue and, if the issue is resolved, may, as they may deem appropriate under the circumstances, report thereon to the other members. If the issue is not resolved satisfactorily with the consultation or within twenty days of the consultation (as determined by the Chair in his or her discretion), the Chair will refer the matter to the Commission as a whole for consideration at the next regularly scheduled or at a specially called in-person, video, or telephone meeting. If the nature or severity of the member's conduct prevents the matter from being corrected by consultation (as determined by the Chair in his or her discretion), the Chair or Chief Executive Officer shall immediately refer the matter to the entire Commission without first attempting a consultation. The Commission's meeting regarding the member's offending conduct must occur within thirty days of the consultation regarding the conduct or within thirty days of the date the Chair or Chief Executive Officer referred the matter to the Commission, if the conduct was determined by the Chair to be uncorrectable by consultation. The Commission may, by at least six votes, recommend appropriate further corrective action, which may include a recommendation to that member's appointing authority that such member be removed from the Commission. The member shall have the right to attend the meeting during which his or her offending conduct is discussed and to speak prior to the Commission's vote, but shall not be present during the Commission's deliberation or vote regarding the member's conduct.

C. Any recommendation made to an appointing authority to remove a member from the Commission shall state the basis for the recommendation, list the rules allegedly violated, and describe the conduct in question. Before the Commission forwards such recommendation to the member's appointing authority, the Commission shall notify the member of such recommendation and shall give that member ten calendar days to submit to the Commission a written statement agreeing or disagreeing with the Commission recommendation, which statement shall then be submitted by the Commission, along with its own recommendation, to the appointing authority.

D. The Commission may request that the appointing authority or its designated committee act on the Commission's request on an expedited basis.

E. Any and all information concerning the recommendation is confidential pursuant to Section 23, and the recommendation shall remind the appointing authority that any appointing authority members who receive any information concerning the recommendation (including any documents from underlying Commission proceedings that are necessary to support the recommendation) must maintain this confidentiality. Once the appointing authority completes its evaluation of the recommendation, the members of the appointing authority who received information concerning the recommendation shall deliver all files and documents


concerning the recommendation in his or her possession to Commission staff or shall destroy same.

F. Unless and until the appointing authority removes a member or that member resigns his or her membership in the Commission, that member shall retain all powers and shall be obligated to perform all duties of regular membership.

This rule change shall become effective upon signing and shall remain in full force and effect thereafter, until amended or changed through future Orders of this Court.

New Orleans, Louisiana, this 4th day of September, 2019

FOR THE COURT:

  
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Bernette Joshua Johnson, Chief Justice