

SUPREME COURT OF LOUISIANA

ORDER

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 4(e) is hereby amended as follows:

Section 4. Formal Proceedings.

(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. If an expedited matter is pending before a hearing officer, the Commission shall issue an order to the hearing officer providing instructions regarding the expediting of the matter.

2. Section 22 is hereby deleted in its entirety and amended to read as follows:

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's resignation or retirement after a matter has become public under Section 23(a)(1) but prior to the conclusion of proceedings before the Commission or the Court shall not preclude the Commission, in its discretion, from filing a motion with the Supreme Court to recover any or all of the costs incurred by the Office of Special Counsel, the hearing officer, and/or the Commission. Absent exceptional circumstances, the Commission shall file such a motion if the judge was on interim disqualification under Section 27 at the time of resignation or retirement. An itemized cost statement shall be appended to any such motion. The Court, in its discretion, may tax all or any portion of the costs recommended by the Commission. This subsection shall not apply if a judge is no longer a judicial officer due to the expiration of his or her term in office.

(c) A judge who is on interim disqualification pursuant to Section 27(a)(1) for being indicted or charged with a serious crime under state or federal law shall, absent exceptional circumstances as determined by the Commission and/or the Court, also be taxed for the costs incurred by the Supreme Court for the appointment and service of a pro tempore judge to cover the judge's docket during the period of interim disqualification if the judge is convicted of the underlying crime and the conviction becomes final. Such costs shall be included in an itemized cost statement.

(d) 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.

3. Section 23(a)(1) is hereby amended as follows:

Section 23. Confidentiality.

(a) (1) All documents filed with, and evidence and proceedings before the Judiciary Commission are confidential. However, once the Commission files a notice of hearing as provided for in Section 4 of this rule and the respondent judge either files an answer or the time for filing an answer has expired, proceedings before the Judiciary Commission and its hearing officers in the matter shall be open to the public and shall be subject to the restrictions on trial courts in Canon 3A(9) of the Code of Judicial Conduct, and the pleadings, orders, and evidence filed into the record of the proceedings shall be public record, subject

to the right of the hearing officer or the Commission to issue a protective order in accordance with Section 8(e). Pre-hearing status conferences, the deliberations of the hearing officer and the Commission, and the Commission's and Office of Special Counsel's internal papers and correspondence, such as investigative reports, staff memoranda, and the work product of the Commission, the Office of Special Counsel, and their staff, shall remain confidential. Commission proceedings in which a notice of hearing was filed prior to the May 1, 2020, effective date of this amendment shall be governed by the rules in place prior to the May 1, 2020, effective date of this amendment.

4. Section 23(b)(8) is hereby amended as follows:

Section 23. Confidentiality.

- (b) (8) The Commission may provide documents, evidence, and information from proceedings to the Louisiana Attorney Disciplinary Board in appropriate cases when approved by this Court, unless the documents, evidence, and information are already public, in which case the Commission does not need the approval of 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.

5. Section 27(i) is hereby added as follows:

Section 27. Interim Disqualification.

- (i) A judge on interim disqualification may be taxed with costs as provided for in Section 22.

6. Section 29(f)(1) is hereby amended as follows:

Section 29. Hearing Officers.

- (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 three copies of any brief submitted to the Commission. Thereafter, the respondent judge shall file an original and three copies of any reply brief submitted to the Commission.

7. Section 31(b) is hereby amended as follows:

Section 31. Deferred Recommendation of Discipline Agreement.

(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.

DRDAs executed after the May 1, 2020, effective date of this amendment shall be public record and the underlying conduct and the fact that an admonishment was given pursuant to the DRDA may be referenced in another matter involving the judge in accordance with Section 3(e) of this rule. DRDAs executed prior to the effective date of this amendment shall be governed by the rules in place prior to the amendment's effective date.

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.

Given under our hands and seal this 19th day of November A. D., 2021, New Orleans, Louisiana.

FOR THE COURT:

A handwritten signature in black ink, reading "John L. Weimer", with a long horizontal flourish extending to the right.

John L. Weimer, Chief Justice