

**SUPREME COURT OF LOUISIANA**

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**O R D E R**

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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 3 is hereby deleted in its entirety and amended to read 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.

(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 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.

(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. Moreover, admonishments may be publicly issued in accordance with Section 3(f) 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 July 1, 2016, 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) (1) A judge of a court of appeal or a justice of the Louisiana Supreme Court shall be eligible to receive only one confidential admonishment during any ten-year period. All other judges shall be eligible to receive only one confidential admonishment during any six-year period. If a judge has received an admonishment in a previous file during the applicable time period prior to the date the complaint is received by the Commission in a subsequent file (or during the time between the receipt of the complaint and the Commission's disposition of such), the judge shall not be eligible for a confidential admonishment in the subsequent file.

(2) If a judge is not eligible to receive a confidential admonishment, the Commission may propose the issuance of a public admonishment, and the judge shall be notified in writing of the proposal and of the right to consent or object in accordance with the procedures set forth in Section 3(d) of this rule. If the judge does not consent, the Commission may 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. If the judge consents or if the judge's failure to respond is deemed consent pursuant to Section 3(d), the Commission shall file under seal a petition to the Louisiana Supreme Court to approve the public issuance of the admonishment. The respondent judge and the Commission may append to the petition a joint memorandum that provides support justifying the granting of the petition.

(3) If the Court grants the petition, the Court shall enter an order approving the public issuance of the admonishment, and the petition shall become public. The Court's granting of the petition shall automatically make public any prior confidential admonishment, which shall be appended to the petition, issued to the judge during the applicable period referenced in subsection (f)(1).

(4) If the Court denies the petition, the judge's consent to the proposed admonishment shall be considered withdrawn and cannot be used against the respondent judge in any subsequent proceedings. The petition shall remain sealed and shall not be disclosed or made available for use in any other proceeding. The Court order in this instance shall also remain under seal, and the Court may, in its discretion, provide reasons to the Commission for the denial. If the Court denies the petition, the Commission may 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.

(5) Admonishments issued before the May 1, 2020, effective date of this amendment, unless the admonishment was issued after a formal hearing or after the dispensation of a hearing before a hearing officer pursuant to Section 29(g) and (h), shall not count against a judge's eligibility to receive a confidential admonishment under Section 3(f)(1) of this rule.

(6) The Commission may, in its discretion, consolidate two or more files for disposition as one admonishment, especially if the files involve the same or similar allegations of misconduct against the judge.

(g) 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.

2. Section 7 is hereby deleted in its entirety and amended to read as follows:

**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 and can reasonably accommodate members of the public, 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.

3. Section 8(e) is hereby added as follows:

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

(e) Upon a motion by a party or by a person from whom the information was obtained, and for good cause shown and in appropriate limited circumstances, the Commission or the hearing officer may issue a protective order requiring that certain portions of the record remain confidential.

4. Section 10 is hereby deleted in its entirety and amended to read as follows:

**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 publicly remind, caution, or admonish the judge upon the affirmative vote of a majority of the Commission. Any such reminder, 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.

5. Section 23 is hereby deleted in its entirety and amended to read 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 Canon 3A(9) of the Code of Judicial Conduct and the Appendix to Canon 3, 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.

(2) Nothing in this rule prohibits the respondent judge or anyone other than a Commission member or a member of the Commission staff before a Commission matter becomes public under subsection (a)(1) 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 Sections 8(d) and 8(e) 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 a matter does not become public in accordance with subsection (a)(1).

(3) 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.

(4) 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.

(5) 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); and (iii) any formal charges or notices of hearing authorized by the Commission not already public under Section 23(a)(1). 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.

(6) 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) 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.

(2) 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.

(3) 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.C.T. 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.

(4) 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.

(5) 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.

(6) 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.

(7) 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.

(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.

(9) 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.

(10) The Commission shall publish and report the number of cautions, admonishments, and Deferred Recommendation of Discipline Agreements issued during a year and a general description of the conduct warranting such without identifying the respondent judges involved.

6. Section 27(d) is hereby amended as follows:

**Section 27. Interim Disqualification.**

(d) **Confidentiality.** In the event the recommendation for interim disqualification is filed before a matter has become public record under Section 23(a)(1) of this rule, 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.

7. Section 29 is hereby deleted in its entirety and amended to read as follows:

**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;

(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;

(vi) the Commission may on its own motion, or upon the motion of any party or any person from whom the information was obtained, review any decision by a hearing officer regarding a requested protective order under Section 8(e) of this rule; and

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

(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 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.

**(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 decided by majority vote of the Commission and 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) **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.

(j) **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.

8. Section 31 is hereby deleted in its entirety and amended to read as follows:

**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 an 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.

DRDAs executed after the May 1, 2020, effective date of this amendment shall be public record. 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 on May 1, 2020, 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 13<sup>th</sup> day of April A. D., 2020, New Orleans, Louisiana.

FOR THE COURT:

  
Chief Justice Bernette Joshua Johnson