



# The Judiciary Commission of Louisiana

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## PROPOSED RULE REVISIONS TO SUPREME COURT RULE XXIII RECOMMENDED BY THE JUDICIARY COMMISSION

### Request for Judges' Comments

*Below are proposed revisions to Rule XXIII that the Judiciary Commission is recommending to the Louisiana Supreme Court.*

#### VERIFIED COMPLAINT

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

(a) (1) The Commission, upon receiving a **verified** 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. . . .

(6) A verified complaint is one that is signed under a declaration stating in some form that "By submitting/signing this complaint, I declare under penalty of law that the information contained within this complaint is accurate and true to the best of my knowledge." If the verified complaint contains false information, the complainant could be subject to penalties for such violation.

#### CONFIDENTIALITY

##### **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

1 waiver of confidentiality from the Supreme Court or the Commission in  
2 accordance with the provisions of this section. The record filed by the  
3 Commission with this Court and proceedings before this Court are not  
4 confidential.

5  
6 Nothing in this rule prohibits the respondent judge or anyone other than a  
7 Commission member or a member of the Commission staff ~~before the filing of a~~  
8 ~~Recommendation of Discipline in the Supreme Court~~ from making statements  
9 regarding the underlying facts or events that are the subject of a complaint filed  
10 with the Commission or a proceeding before the Commission. ~~Moreover, once~~  
11 ~~the Commission closes a file or files a notice of hearing, nothing in this rule shall~~  
12 ~~prevent a complainant, respondent, or witness who has given testimony pursuant~~  
13 ~~to Commission proceedings from disclosing or discussing the proceedings.~~  
14 ~~However, from the time a complaint is filed until the Commission closes a file or~~  
15 ~~files a notice of hearing, complainants, respondents, and witnesses may not~~  
16 ~~disclose or discuss the fact that a complaint was filed, the fact that testimony was~~  
17 ~~given pursuant to Commission proceedings, or any information learned as a result~~  
18 ~~of participating in such proceedings. However, all documents and evidence~~  
19 ~~remain confidential if the Commission does not file a matter with the Supreme~~  
20 ~~Court.~~

## 21 22 23 24 **DISABILITY/IMPAIRMENT PROVISIONS (completely new provisions)**

### 25 26 **Section 35. Procedures Regarding Disabilities or Impairments**

27 When considering an allegation of mental or physical disability or impairment, the  
28 Commission will, except as specifically provided in this rule, follow procedures  
29 established by the other sections of Rule XXIII.

30  
31 **(a) Initiation of Incapacity Proceeding.** An incapacity proceeding with regard to  
32 either mental or physical disability or impairment, including impairment attributable to  
33 alcohol or drug use, can be initiated (i) by a complaint lodged with  
34 the Judiciary Commission, (ii) on the Commission's own motion, (iii) by a Chief  
35 Executive Officer verified query (as explained below), or (iv) by an order of involuntary  
36 commitment or interdiction of a judge or other judicial officer who is subject to the  
37 jurisdiction of this Court. A Chief Executive Officer verified query refers to a situation  
38 in which the Chief Executive Officer learns of or receives information or reports  
39 concerning a judge who may have a disability or may be experiencing an impairment  
40 preventing him or her from discharging his or her judicial duties; and conducts a cursory,  
41 discreet inquiry (not a full investigation) of the information. If the allegations within a  
42 disability or impairment complaint or a Chief Executive Officer verified query are  
43 supported by independently verifiable information, the Office of Special Counsel or

1 Chief Executive Officer shall present the information to the Commission’s Chair with a  
2 recommendation as to whether the matter should be opened for further evaluation.

3  
4 **(b) Procedures to Evaluate Allegations of a Disability or Impairment Complaint.**

5 If the Commission opens a disability or impairment file on its own motion or if the  
6 Chair approves the opening of a file based upon either a disability or impairment  
7 complaint or a Chief Executive Officer’s query, a verifying preliminary inquiry will be  
8 initiated.

9  
10 (i) Verifying Preliminary Inquiry Defined. The Chair or the Judiciary Commission  
11 may authorize a “verifying preliminary inquiry” if it finds probable cause that a  
12 disability or impairment exists or if questions remain regarding the existence of a  
13 disability or impairment and may instruct the Office of Special Counsel to expedite  
14 such verifying inquiry, if appropriate. A verifying preliminary inquiry allows the  
15 Judiciary Commission to gather information through records and evaluations, which  
16 the judge is willing to voluntarily provide and/or undergo, to evaluate whether a  
17 complaint has merit before triggering an investigation and involving third parties  
18 beyond evaluating experts and/or the judge’s physicians, but does not allow the  
19 Commission to subpoena records or witnesses.

20  
21 (ii) Judge Response. The Office of Special Counsel shall send the respondent judge  
22 a copy of the complaint or report that prompted the preliminary inquiry, and the  
23 judge shall receive time to respond, the length of which may depend upon  
24 the seriousness of the alleged disability or impairment. If appropriate, the  
25 Commission may urge the judge to provide medical records or other documents  
26 with his or her response.

27  
28 (iii) Medical, Mental, or Expert Evaluation. To evaluate whether the respondent  
29 judge’s physical or mental condition or an addiction is an impediment to the judge  
30 performing his or her judicial duties, the Judiciary Commission may refer the judge  
31 to the Judges and Lawyers Assistance Program (JLAP) for evaluation and/or  
32 examination or may designate one or more qualified medical, mental health, or  
33 other experts to examine the judge. The judge may, if he or she chooses, also  
34 designate, at his or her own expense, an additional expert and submit his or her  
35 existing medical, mental health, or JLAP records. The expert or experts shall report  
36 to the Commission and to the parties.

37  
38 (iv) Objections.

1 (a) Objections to Referrals to JLAP or Experts for Evaluation. The judge may  
2 file within fourteen days of receiving the Commission's verifying  
3 preliminary inquiry a Notice of Objection to the Commission's referral to  
4 JLAP or other expert.

5  
6 (b) Objections to Reports. The respondent judge shall have an opportunity to  
7 file objections to any Commission-designated or JLAP experts' report  
8 and may submit reports from his or her own expert, at his or her expense.  
9

10 (v) Investigation. After the Verifying Preliminary Inquiry and upon review solely  
11 of the complaint, and any materials submitted by the experts and respondent judge,  
12 the Commission shall decide whether an investigation should be authorized. If the  
13 Judiciary Commission finds probable cause that a disability or impairment exists or  
14 if questions remain regarding the existence of a disability or impairment, it  
15 may authorize an investigation and may instruct the Office of Special Counsel to  
16 expedite such investigation, if appropriate.  
17

18 (vi) Requests for Protected Information. After an investigation is authorized, if  
19 requested by the Judiciary Commission, the respondent shall furnish the names of  
20 any and all treating medical professionals and any written consent or forms to the  
21 Judiciary Commission, as required by local, state, or federal laws for the release of  
22 information and records relating to the judge's disability, addiction, or other  
23 condition. If the respondent judge refuses to voluntarily provide his or her medical,  
24 mental health, or treatment records or a consent to have them released to the  
25 Commission, the Office of Special Counsel may subpoena the records, provided  
26 that the Office of Special Counsel has complied with applicable laws regarding the  
27 disclosure of protected information, including that it has made a good faith attempt  
28 to provide written notice to the judge before issuance of the subpoena; that the  
29 notice included sufficient information about the disciplinary matter for which the  
30 protected medical, mental health, or treatment information is requested to permit the  
31 judge to raise an objection to the subpoena; that the judge received sufficient time  
32 to raise an objection before issuance of the subpoena; and that the judge did not file  
33 an objection within the time allowed or all objections filed by the judge have been  
34 resolved by the Commission and the disclosures being sought are consistent with  
35 such resolution.  
36

37 (vii) Incompetence. If at any point in the proceeding, the Judiciary Commission  
38 determines that the judge is not competent and has no representative, it shall  
39 appoint a curator ad hoc pursuant to Rule XXIII, Section 9.

1  
2 (c) **Proceedings for Involuntary Retirement.** The Judiciary Commission, pursuant  
3 to procedures set forth herein below, upon determining by clear and  
4 convincing evidence that a judge suffers from any condition or impairment that  
5 adversely affects the judge's ability to perform judicial functions (including but not  
6 limited to a physical or mental condition, an addiction, a substance-abuse problem, or  
7 any other impairment), may recommend to the Court that the judge be involuntarily  
8 retired for a disability that seriously interferes with the performance of his or her duties  
9 and that it is or is likely to become permanent. *See* 1974 La. Const. art. V, §25C.

10  
11 (i) **Interim Disqualification.** Pending a determination with regard to involuntary  
12 retirement, after receiving a recommendation from the Judiciary Commission and  
13 if the requirements of Section 27 are satisfied, the Court may immediately  
14 disqualify the judge in question from exercising any judicial function, without loss  
15 of salary, pending further proceedings before the Judiciary Commission and/or  
16 the Court.

17  
18 (ii) **Formal Proceedings.** After an investigation has been completed, if the  
19 Commission concludes that there is probable cause to believe that there are grounds  
20 for involuntary retirement under Article V, § 25(C) of the Constitution, a hearing  
21 should be instituted pursuant to the procedures set forth for hearings under La. Sup.  
22 Ct. Rule XXIII. The matter shall be resolved or submitted to the Supreme Court  
23 with a recommendation within a year of the file being opened or within six months  
24 of the order granting interim disqualification, whichever occurred later, unless good  
25 cause exists for a longer period.

26  
27 (iii) **Stipulated recommendation.** The Commission and the judge may agree upon  
28 proposed findings of fact, conclusions of fact and law, and a disposition of the case.  
29 The stipulated disposition shall be submitted to the Court for approval or rejection  
30 following the Consent Discipline procedures within Section 30, except that the  
31 Court may authorize a shorter time period for the parties to respond to a conditional  
32 rejection.

33  
34 (d) **Confidentiality.** All proceedings in the Judiciary Commission and the Court shall  
35 be confidential unless the Court orders, pursuant to this Section, (i) that a judge be  
36 intermily disqualified (*i.e.*, disqualified from exercising any judicial function pending  
37 further proceedings before the Judiciary Commission or the Court) or (ii) the involuntary  
38 retirement of a judge or other action warranted because of the disability or impairment,  
39 at which time only the order regarding the interim disqualification or the final order of

1 involuntary retirement or other action of the Court shall become public. The underlying  
2 records of the interim disqualification, involuntary retirement, or disability or  
3 impairment proceeding shall continue to be filed under seal unless the Court orders  
4 otherwise.

5  
6 (e) **Certification that disability or impairment has been removed.** Any judge  
7 involuntarily retired pursuant to this rule and 1974 La. Const. art. V, Sec. 25C shall be  
8 entitled to petition for a determination that the cause of the disability or  
9 impairment which led to the involuntary retirement has been removed, by petitioning  
10 the Judiciary Commission for a determination of eligibility to seek judicial  
11 office pursuant to Rule XXIII, Section 26.

12  
13 *Related Disabilities/Impairment Revisions Regarding Interim Disqualification*

14  
15 **Section 27. Interim Disqualification.**

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

- 19 (1) **The judge** has been indicted or charged with a serious crime under state or federal  
20 law;  
21 (2) **The judge has been judicially interdicted or is involuntarily committed on the**  
22 **grounds of incompetency or incapacity by a final judicial order after a judicial**  
23 **hearing;**  
24 (3) **Upon receiving substantial, credible evidence which establishes probable cause that**  
25 **a judge may have violated Article V, §25(C) of the Constitution or may have**  
26 **committed a violation of the Code of Judicial Conduct and may pose a substantial**  
27 **threat of serious harm to the public or the administration of justice; or**  
28 (4) **Upon receiving substantial, credible evidence which establishes probable cause that**  
29 **a judge may suffer from a disability or impairment that may seriously interfere with**  
30 **the performance of his or her judicial duties**

31  
32 may recommend to the Court that the judge be immediately disqualified from  
33 exercising any judicial function, pending further proceedings before the Judiciary  
34 Commission or the Court. For the purpose of this rule, the term “serious crime”  
35 means:

- 36 (i) any felony; or  
37 (ii) any other lesser crime that reflects adversely on the judge's honesty,  
38 trustworthiness or fitness as judge.  
39

1                    *Related Disabilities/Impairment Revisions Regarding DRDAs*

2                    **Section 31. Deferred Recommendation of Discipline or Disability/Impairment**  
3                    **Agreement.**

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

8  
9                    (1) The judge must admit to some or all of the ethical violations alleged in the notice  
10                    of hearing, agree to a private admonishment for such conduct, and agree to take  
11                    specified remedial steps during the term of the DRDA to address any harm caused by  
12                    the judge's conduct and to prevent a recurrence of such conduct. The judge must also  
13                    consent to having the Commission recommend a specified type of discipline to this  
14                    Court if the Commission determines by clear and convincing evidence, after a hearing  
15                    before a hearing officer or the Commission, as decided by the Commission, that the  
16                    judge did not comply with the terms and conditions of the DRDA.

17  
18                    (2) The Commission must agree to defer making a recommendation of discipline to  
19                    this Court during the term of the DRDA provided its terms and conditions are  
20                    complied with.

21  
22                    If the Commission makes a recommendation of discipline in a case in which a DRDA  
23                    has been executed, this Court is not bound to impose the type of discipline referenced  
24                    in the DRDA and may impose any discipline authorized by the Louisiana Constitution,  
25                    or no discipline at all.

26  
27                    Before a hearing has been held on the allegations contained in a notice of hearing, the  
28                    respondent judge may request, or the judge and the Special Counsel may jointly  
29                    request, a DRDA within the time specified for such requests in the case management  
30                    order. The request may be submitted in the form of a pleading or by letter to the  
31                    Commission, in care of Commission Counsel, with a copy to the Special Counsel, and  
32                    shall include a detailed statement of the terms and conditions of the proposed DRDA.  
33                    If the Special Counsel has not joined in the request, the request shall also contain a  
34                    statement as to the Special Counsel's position on the request, if known to the judge.  
35                    Unless the request was made jointly by the judge and the Office of Special Counsel,  
36                    the Commission shall grant the Office of Special Counsel an opportunity to respond to  
37                    the request.

38  
39                    After a hearing has been held on the allegations contained in a notice of hearing and  
40                    the judge has appeared before the Commission for further proceedings in accordance  
41                    with Section 29(f) of this rule, the Commission may, in its discretion, propose to the  
42                    judge that the case be resolved with a DRDA.

43  
44                    In deciding whether to grant a DRDA, the Commission may consider any factors it  
45                    deems appropriate, including but not limited to the following:

- 1
- 2 (i) The nature and seriousness of the misconduct;
- 3
- 4 (ii) The respondent judge's length of service on the bench;
- 5
- 6 (iii) The nature of the procedures or steps the judge has taken, or proposes to take, to
- 7 correct the problem and avoid a recurrence of it;
- 8
- 9 (iv) Whether the misconduct was private or public;
- 10
- 11 (v) Whether the judge received any private benefit as the result of engaging in the
- 12 ethical misconduct; and
- 13
- 14 (vi) Whether the judge has previous proven misconduct.
- 15

16 The fact that a DRDA has been executed and the contents of the DRDA shall remain  
17 confidential unless the judge fails to comply with the terms and conditions of the  
18 DRDA, in which case the DRDA shall become a public record upon the matter being  
19 lodged with this Court. If the conditions of the DRDA are satisfied by the judge and  
20 the DRDA expires according to its terms, the underlying conduct and the fact that an  
21 admonishment was given pursuant to a DRDA may be referenced in another matter  
22 involving the judge in accordance with Section 3(e) of this rule.

23 (b) At any stage of the proceeding, the Commission may enter into a Deferred  
24 Assessment of Disability Agreement (DADA) with the respondent judge. A DADA  
25 must contain the following provisions and may contain such other provisions as the  
26 Commission deems appropriate:

27 (1) The judge must admit to some or all of the disabilities or impairments alleged in  
28 the complaint(s); agree to participate in specified treatment(s), programs, and/or  
29 monitoring; agree to allow reports to the Commission of his or her progress, condition,  
30 and compliance from the professionals, doctors, and/or facilitators of the treatments or  
31 programs; and agree to take specified remedial steps, if applicable, during the term of  
32 the DADA to address any harm caused by the judge's conduct and to prevent the  
33 judge's disability or impairment from interfering with his or her ability to perform his  
34 or her judicial duties. The judge must agree that the Commission may close the matter  
35 with counseling action (*i.e.*, reminder, caution, admonishment) regarding the disability  
36 or impairment upon expiration of the DADA. The judge must also consent to having  
37 the Commission recommend a specified type of action to this Court or, alternatively,  
38 filing a Joint Motion for Discipline by Consent to the Court if the Commission  
39 determines by clear and convincing evidence, after a hearing before a hearing officer  
40 or the Commission, as decided by the Commission, that the judge did not comply with  
41 the terms and conditions of the DADA.

42  
43 (2) The Commission must agree to defer making a recommendation of action to this  
44 Court during the term of the DADA provided its terms and conditions are complied  
45 with.



1  
2 If the Commission makes a recommendation of action in a case in which a DADA has  
3 been executed, this Court is not bound to impose the type of action referenced in the  
4 DADA and may impose any action authorized by the Louisiana Constitution, or no  
5 action at all.

6  
7 At any time during the proceedings, the respondent judge may request, or the judge  
8 and the Special Counsel may jointly request, a DADA. The request may be submitted  
9 in the form of a pleading or by letter to the Commission, in care of Commission  
10 Counsel, with a copy to the Special Counsel, and shall include a detailed statement of  
11 the terms and conditions of the proposed DADA. If the Special Counsel has not joined  
12 in the request, the request shall also contain a statement as to the Special Counsel's  
13 position on the request, if known to the judge. Unless the request was made jointly by  
14 the judge and the Office of Special Counsel, the Commission shall grant the Office of  
15 Special Counsel an opportunity to respond to the request.

16  
17 In deciding whether to grant a DADA, the Commission may consider any factors it  
18 deems appropriate, including but not limited to the following:

- 19  
20 (i) The nature and seriousness of the disability or impairment;
- 21  
22 (ii) The length of time the judge has had the disability or impairment;
- 23  
24 (iii) Whether the judge has received prior treatment for the disability or impairment  
25 and the degree of success with the prior treatment(s);
- 26  
27 (iii) The nature of the procedures or steps the judge has taken, or proposes to take, to  
28 address the disability or impairment and to prevent the disability or impairment from  
29 impacting his or her duties or harming the judge or others;
- 30  
31 (iv) Whether the disability or impairment impacted the judge's performance of his or  
32 her judicial duties;
- 33  
34 (v) The respondent judge's length of service on the bench;
- 35  
36 (vi) Whether the disability or impairment resulted in any misconduct or complaint(s)  
37 and the nature of the misconduct;
- 38  
39 (vii) Whether the judge has previous proven misconduct.

40  
41 The fact that a DADA has been executed and the contents of the DADA shall remain  
42 confidential unless the judge fails to comply with the terms and conditions of the  
43 DADA, in which case the DADA shall become a public record upon the matter being  
44 lodged with this Court. If the conditions of the DADA are satisfied by the judge and  
45 the DADA expires according to its terms, the underlying conduct and the fact that  
46 counseling action (*i.e.*, reminder, caution, admonishment) was given pursuant to a

1           DADA may be referenced in another matter involving the judge in accordance with  
2           Section 3(e) of this rule.

3