



The Judiciary Commission of Louisiana

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STATEMENT OF JUDICIARY COMMISSION OF LOUISIANA CHAIR ED WALTERS AND VICE-CHAIR JUDGE JOHN MOLAISON

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Two bills have been pre-filed for the upcoming legislative session to revise our system of judicial discipline. One is a constitutional amendment seeking to dilute the Louisiana Supreme Court's exclusive jurisdiction over judges and the second bill attempts to overhaul the existing system to remove protections of confidentiality.

Our form of democracy requires a constitutional balance of power between the three equal branches of government: executive, legislative, and judicial. The balance and separation of power is consistently found in most state and federal systems. Each branch has its own discipline system. The judicial branch, through the Louisiana Supreme Court, has exclusive constitutional jurisdiction over the discipline of Louisiana's judiciary. The Louisiana Constitution provides for a Judiciary Commission, composed of nine members: three judges, three attorneys and three citizen members. They serve without compensation. The Commission is charged with receiving, reviewing, and investigating complaints, and recommending discipline to be ordered by the Supreme Court. This discipline can include removal from office. Judges can be, and have been, removed from office by the Supreme Court for disciplinary infractions, without the need for a cumbersome recall petition and vote, which is the removal procedure for most other public officials.

The Commission continuously studies and suggests amendments of its rules to the Supreme Court. Over the last several years, confidentiality has been a main focus of review.

Every day in courtrooms throughout the state, judges decide who wins and who loses, who remains free and who goes to jail. Some people leave happy, and some people leave upset, and often, rather than filing an appeal, an unhappy litigant files a complaint against a judge. Because many of these complaints are frivolous and are dismissed for not alleging misconduct, these complaints are confidential, just as complaints filed with the Board of Ethics are confidential. Confidentiality protects the person who makes a complaint from retaliation or recrimination, the judge who is the subject of the complaint from frivolous complaints, and the public

at large by ensuring integrity in the investigatory process. These same principles underlie the confidentiality rules of the Board of Ethics, which oversees non-judicial state public officials.

Every state, and the Federal judiciary, has its own rules concerning confidentiality of judicial discipline proceedings. Complainants are and have always been free to talk about what happened that caused them to file a complaint. And after changes adopted last year, a complainant can talk openly and in fact critically about the Judiciary Commission proceedings once the matter has been closed. This also means that a judge can be asked about complaints filed against him or her that have been closed.

After thoroughly comparing our rules to the rules of other states, the Judiciary Commission has proposed several rule changes which the Supreme Court is currently considering. The Supreme Court is soliciting comments about the rule changes from attorneys and judges; this is the practice when amending rules. The proposed changes place the judiciary and the public's interest in transparency in a fair and balanced position. While the current system is the same as in many states, these changes would bring Louisiana's judicial discipline rules in line with the majority of other states.

Proposed Rule Change 1: A respondent judge may receive only one private admonishment, which is a non-disciplinary private disposition, within a specified time period; subsequent admonishments shall be public. This is a new rule. Prior admonishments were not public because admonishments are not discipline but rather serve to counsel or warn the judge about his or her conduct, which was not serious enough to warrant a recommendation of discipline.

Proposed Rule Change 2: Before a recommendation of discipline is made by the Judiciary Commission to the Supreme Court, a hearing is held before a hearing officer and evidence is introduced. These proceedings will now be open to the public after the filing of a notice of hearing and a judge answers or the time delay for answering has expired. All filings, exhibits, testimony, and hearing officer findings of fact and conclusions of law would be open to the public. The hearing and all evidence introduced will occur in a public setting. Appearances before the Judiciary Commission would be open to the public. The result of the Commission's deliberations would be public. This is a new rule. Prior hearings and the evidence introduced were not public.

Proposed Rule Change 3: Publish in the Commission section of the Supreme Court's Annual Report and on the Commission's page on the Supreme Court website more detailed information regarding the Commission's private, non-disciplinary dispositions, without identifying the judge involved, but with a description of the type of infraction and the action taken by the Commission.

Our own legislature has rules providing for confidentiality of complaints and proceedings before the Board of Ethics. However, that is where the similarity of the discipline systems ends. The Ethics Board can only fine or censure an elected official, but not remove him or her from public office. The Supreme Court, after receiving a recommendation of discipline from the Judiciary Commission, can remove judges from elective office without a vote of the electorate.

In closing, an independent judiciary is critical to our system of government. We believe that the recent rule changes, in combination with the rule changes presently under consideration, maintain judicial independence, respect the judiciary as a co-equal branch of government, and protect the public who have called for increased transparency. We look forward to working with the Louisiana Legislature to improve the judiciary system while maintaining its independence and our form of government which has withstood the test of time.

Ed Walters, Chair, Judiciary Commission of Louisiana
Judge John Molaison, Vice-Chair, Judiciary Commission of Louisiana