

2018 Regular Session

HOUSE BILL NO. 709

BY REPRESENTATIVE MARCELLE

DISTRICT ATTORNEYS: Creates the State Commission on Prosecutorial Oversight and the Code of Prosecutorial Conduct

1 AN ACT

2 To enact Chapter 43 of Title 13 of the Louisiana Revised Statutes, to be comprised of R.S.
3 13:5986 through 6011, relative to prosecutors; to create the State Commission on
4 Prosecutorial Conduct; to provide for the organization and structure of the
5 commission; to provide for the functions, powers, processes, and duties of the
6 commission; to provide for the creation of the Code of Prosecutorial Conduct; to
7 provide for the overseeing of District Attorney-Operated Diversion Programs; to
8 provide for the creation of Prosecutor Performance Accountability Program; and to
9 provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Chapter 43 of Title 13 of the Louisiana Revised Statutes, comprised of
12 R.S. 13:5986 through 6011, is hereby enacted to read as follows:

13 CHAPTER 43. STATE COMMISSION ON PROSECUTORIAL CONDUCT

14 §5986. Establishment of commission

15 The State Commission on Prosecutorial Conduct is hereby established. The
16 commission shall have the authority to review the conduct of prosecutors upon filing
17 of a complaint with the commission to determine whether the conduct as alleged
18 violates a provision of this Chapter, other applicable statutes, case law, or Louisiana
19 Rules of Professional Conduct.

1 §5987. Definitions

2 For the purposes of this Chapter, the following terms have the following
3 meanings:

4 (1) "Case manager" means the commission member that facilitates the
5 movement of the case through the system and addresses any procedural problems or
6 issues.

7 (2) "Chair" means the chairman of the commission, who presides over
8 commission meetings and hearings to inquire into allegations of misconduct or
9 incapacity contained in a notice of hearing concerning a prosecutor, conducts such
10 proceedings, and rules on objections to evidence.

11 (3) "Commission" means the State Commission on Prosecutorial Conduct.

12 (4) "Commission counsel" means the person employed by the commission
13 who advises the commission with respect to matters coming before it.

14 (5) "Diversion program" means programs that divert a defendant from
15 prosecution, incarceration, or confinement, and to an alternative program or
16 treatment. This shall include but is not limited to pretrial intervention programs,
17 educational programs, and treatment programs.

18 (6) "Executive officer" means the party employed by the commission that
19 acts as the primary administrative support person to the commission.

20 (7) "Hearing officer counsel" means the person employed by the commission
21 who advises the hearing officers with respect to matters coming before them.

22 (8) "Prosecutor" means any person who represents the state or a political
23 subdivision of the state in an action to exact a penalty, fine, sanction, or forfeiture.

24 (9) "Special counsel" means the person employed by the commission that
25 acts as the legal counsel for the commission.

26 §5988. State Commission on Prosecutorial Conduct; organization

27 A. Composition. The Commission on Prosecutorial Conduct shall consist
28 of all of the following members:

1 (1) One court of appeal judge and two district court judges selected by the
2 Louisiana Supreme Court.

3 (2) Two attorneys admitted to the practice of law for at least ten years and
4 one attorney admitted to the practice of law for at least three years but not more than
5 ten years, selected by the Conference of Court of Appeal Judges. Of the selected
6 lawyers, one shall be a public defender, one shall be a private defense attorney, and
7 one shall be a prosecutor.

8 (3) Five citizens of this state who are not lawyers, active or retired judges,
9 nor public officials. These five citizen members shall be selected by the governor
10 of this state. Of the five citizen members, one shall be a person who has had a felony
11 conviction and served at least a year in state prison; one shall be a victim of a crime;
12 one shall be a licensed social worker who has had significant experience working
13 with those in the criminal justice system; one shall be a representative from academia
14 who is an expert in criminal justice; and one shall be a representative from academia
15 who is expert in forensic psychiatry or psychology.

16 B. Term; vacancy. Each member of the commission shall serve a four-year
17 term and the term shall be non-renewable. In addition, the term shall end upon the
18 occurrence of any event that would have made the member ineligible for
19 appointment. When a vacancy occurs, a successor shall be appointed for a four-year
20 term by the authority that appointed the predecessor of that member.

21 C. Chairman; other officers. The commission shall select from its members
22 a chairman, a vice chairman, and such other officers, as it deems necessary. A
23 commission member may hold the position of an officer for a term of one year and
24 these terms are non-renewable.

25 D. Commission members; compensation prohibited; expenses. No member
26 of the commission shall receive any compensation for his services, but shall be paid
27 the expenses necessarily incurred in the performance of his duties as a member of
28 the commission.

1 E. If a member of the commission who is a prosecutor is the subject of a
2 complaint or investigation with respect to his qualifications, conduct, fitness to
3 perform or performance of his official duties, he shall be disqualified from
4 participating in any and all proceedings with respect thereto. If a member of the
5 commission is employed in the same organization as the subject of a complaint or
6 investigation with respect to his qualifications, conduct, fitness to perform, or
7 performance of his official duties, he shall be disqualified from participating in any
8 and all proceedings with respect thereto.

9 §5989. Functions

10 A. The commission shall review the conduct of prosecutors upon filing of
11 a complaint with the commission to determine whether the conduct as alleged
12 violates a provision of this Chapter, other applicable statutes, case law, or Louisiana
13 Rules of Professional Conduct.

14 B. On recommendation of the commission, the Louisiana House of
15 Representatives may institute the impeachment process relating to a prosecutor for
16 willful misconduct relating to his official duty, willful and persistent failure to
17 perform his duty, persistent and public conduct prejudicial to the administration of
18 justice that brings the office of the district attorney into disrepute, conduct while in
19 office which would constitute a felony, conviction of a felony, or incapacity that
20 seriously interferes with the performance of his duties and that is or is likely to
21 become permanent. On recommendation of the commission, the House of
22 Representatives may disqualify a prosecutor from exercising any prosecutorial
23 function, without loss of salary, during pendency of the impeachment proceedings.
24 Impeachment shall be by the House of Representatives and trial by the Senate, with
25 senators under oath or affirmation for the trial. The concurrence of two-thirds of the
26 elected senators shall be necessary to convict. The Senate may try an impeachment
27 whether or not the House is in session and may adjourn when it deems proper.
28 Conviction upon impeachment shall result in the immediate removal from office.

1 Nothing in this Chapter shall prevent other action, prosecution, or punishment
2 authorized by law.

3 §5990. Powers and duties

4 The commission shall have the following functions, powers, and duties:

5 A. To conduct hearings and investigations, administer oaths or affirmations,
6 subpoena witnesses, compel their attendance, examine them under oath or
7 affirmation, and require the production of any books, records, documents, or other
8 evidence that it may deem relevant or material to an investigation or hearing. The
9 commission may designate any of its members or any member of its staff to exercise
10 any such powers, provided, however, only a member of the commission or the chief
11 executive officer has the power to subpoena witnesses or require the production of
12 books, records, documents or other evidence. The prosecuting agency may inform
13 the commission of its position that the commission's investigations will substantially
14 interfere with the agency's own investigation or prosecution. If the prosecuting
15 agency, by affirmation with specificity and particularity, informs the commission of
16 its basis for that position, the commission shall only exercise its powers in a way that
17 will not interfere with an agency's active investigation or prosecution.

18 B. To request and receive from any court, department, division, board,
19 bureau, commission, or other agency of the state or political subdivision thereof or
20 any public authority such assistance, information, and data as will enable it properly
21 to carry out its functions, powers, and duties.

22 C. To report annually, on or before the first day of April in each year and at
23 such other times as the commission shall deem necessary, to the governor, the House
24 of Representatives, the Senate, and the chief justice of the Louisiana Supreme Court,
25 with respect to proceedings which have been finally determined by the commission.
26 Such reports may include legislative and administrative recommendations. The
27 contents of the annual report and any other report shall not conform to the provisions
28 of this Chapter relating to confidentiality.

1 D. To promulgate rules and procedures, not otherwise inconsistent with law,
2 necessary to carry out the provisions and purposes of this Section. All such rules and
3 procedures shall be filed in the offices of the Louisiana Supreme Court and the
4 secretary of state.

5 E. To do all other things necessary and convenient to implement the powers
6 and duties expressly set forth in this Section.

7 §5991. Employment of attorneys and staff personnel; expenditures

8 A. The commission shall employ and fix the duties and compensation of a
9 chief executive officer and at least one special counsel. The chief executive officer
10 shall act as the primary administrative support person to the commission. Special
11 counsel shall act as legal counsel for the commission. The commission may employ
12 and fix the duties and compensation of staff personnel and other employees as it
13 deems necessary.

14 B. The commission may make any expenditures, including the payment of
15 the fees of witnesses, as it finds necessary to accomplish its functions.

16 §5992. Sessions

17 The commission shall convene at least once per quarter. Upon notice to all
18 members, the chair may call a special session or dispense with a scheduled session
19 as the business of the commission may necessitate.

20 §5993. Attendance and quorum

21 A quorum for the conduct of any official business shall be eight members of
22 the commission. Members may participate in regularly scheduled meetings by
23 teleconference only in the event of illness of the member that precludes travel to the
24 site of the meeting; provided, however, the chair shall have the discretion to permit
25 a member to participate in a commission meeting by teleconference if the chair
26 reasonably decides that extraordinary circumstances exist that permit such
27 participation. Under no circumstances may a commission member participate in a
28 hearing by teleconference.

1 §5994. Form of complaints and self-reported misconduct

2 A. Complaints made to the commission concerning the misconduct or
3 incapacity of a prosecutor shall be in writing, or reduced to writing, and shall specify
4 the misconduct or incapacity complained of, and should be signed by the
5 complainant.

6 B. Judges are mandatory reporters for instances of prosecutorial misconduct
7 observed in their courtrooms.

8 C. A prosecutor may self-report potential misconduct, which may serve as
9 mitigating evidence if the commission later determines that conduct was unethical.
10 If a prosecutor chooses to self-report, to qualify as a "self-report" the information
11 must be communicated in writing, specifically identify conduct that the prosecutor
12 suspects is potential misconduct, and be sent to the commission.

13 D. The commission, however, may consider alleged misconduct or
14 incapacity of any prosecutor from whatever source, including anonymous complaints
15 and news reports, and may do so on its own motion.

16 §5995. Receipt of complaints; screening of complaints

17 A. All complaints should be directed to the chief executive officer of the
18 commission or to the special counsel. Any member of the commission, however,
19 may receive a complaint or bring any matter to the attention of the commission on
20 his own motion.

21 B. The chief executive officer may do any of the following:

22 (1) Direct such complaints to the special counsel for further screening and
23 preliminary investigation.

24 (2) In his discretion, bring such complaints directly to the attention of the
25 chair for other action, as the circumstances may require.

26 C. The special counsel shall maintain a docket of all complaints and shall
27 provide all of the following:

28 (1) A written report as to pending open files to the commission, upon the
29 completion of each reporting stage of the proceedings.

1 (2) A written report upon the specific request of the chair or the chief
2 executive officer of the commission.

3 D. The commission shall commence a preliminary inquiry concerning
4 complaints that are not obviously unfounded or frivolous, or conclusory or
5 contradictory on their face, or disproved by the contents of or the attachments to the
6 complaint, and that allege facts that, if true, could constitute prosecutorial
7 misconduct in violation of this Chapter, other applicable statutes, case law, or
8 Louisiana Rules of Professional Conduct.

9 E. The special counsel shall screen complaints to determine if they are
10 obviously unfounded or frivolous, conclusory or contradictory on their face, or
11 disproved by the contents of or the attachments to the complaint. These complaints
12 determined to be unfounded, frivolous, conclusory, contradictory, or disproved shall
13 be suspended and may not proceed for further review by the commission unless a
14 majority of the commission members vote to do so.

15 F. If a file has been suspended and the commission has not reversed the
16 decision to suspend, and a complainant objects, he may lodge a written appeal of the
17 decision, which shall be directed to the chief executive officer or to the special
18 counsel. The request for appeal must state the basis for his disagreement with the
19 suspension and may provide further information to the commission concerning the
20 facts underlying the original complaint. The commission will review the original
21 complaint and the written request for appeal at a subsequent regularly scheduled
22 meeting of the commission. The decision made by the commission concerning the
23 appeal shall be final.

24 §5996. Answering complaints and responding to repetitive, vexatious, threatening,
25 or abusive communications or complaints

26 A. All complaints received by the commission shall be answered in writing
27 with reasons as the commission may deem advisable, to the extent there is no
28 conflict with confidentiality imposed by this Chapter.

1 B. The provisions of Subsection A of this Section shall not be applicable to
2 repetitive, vexatious, threatening, or abusive communications or complaints.

3 Commission staff is not required to respond to repetitive, vexatious, threatening, or
4 abusive communications, or complaints.

5 §5997. Conduct of preliminary inquiries and investigations

6 A. The preliminary inquiry shall ordinarily consist of the special counsel
7 sending the respondent prosecutor a copy of the written complaint, inviting the
8 respondent prosecutor to respond to the allegations in the complaint, informing the
9 respondent prosecutor that he has the right to defend himself against the allegations
10 contained in the notice by the introduction of evidence, and informing the respondent
11 prosecutor that he shall be entitled to the assistance of counsel at every stage of the
12 proceedings; however, funding for such counsel will not be provided by the
13 commission or the state. Once the respondent prosecutor, or legal counsel for the
14 respondent prosecutor, has responded or the time for responding has passed without
15 a response, the matter will be submitted to the full commission for its decision
16 concerning further action, if any. However, the commission may cause the
17 preliminary inquiry to be made in any manner it deems proper under the
18 circumstances. It may be made by the chief executive officer, by special counsel, or
19 by any other person designated by the commission who is not a member of the
20 commission, such as a special counsel ad hoc.

21 B. With respect to an investigation for the purpose of determining whether
22 a notice of hearing concerning allegations of misconduct or incapacity should be
23 authorized, the commission may cause such investigation to be made in any manner
24 it deems proper. It may be made by special counsel or by any other person
25 designated by the commission who is not a member of the commission, such as a
26 special counsel ad hoc.

1 §5998. Subpoenas, production of evidence; oaths; filings made with the
2 commission; bench books and proposed findings of fact and conclusion of
3 law; prosecutor's duty to cooperate; case managers; prehearing motions; and
4 exhibits

5 A. The commission or its chief executive officer may issue subpoenas for
6 witnesses or the production of books, records, documents, or other evidence deemed
7 relevant or material to an investigation, at the request of special counsel, or deemed
8 relevant and material to a hearing, at the request of special counsel or the respondent
9 prosecutor, or legal counsel for the respondent prosecutor. In addition to service by
10 other legal means, subpoenas, or other process issued by the commission may also
11 be served at the notice of hearing stage of proceedings, by a person designated by the
12 respondent prosecutor, or legal counsel for the respondent prosecutor, after written
13 notice of such designation has been filed with the commission. If a subpoena is
14 served by a person designated by a respondent prosecutor, or legal counsel for the
15 respondent prosecutor, in accordance with this Subsection, the person requesting the
16 subpoena shall file with the commission a fully executed affidavit of service with
17 respect to such subpoena.

18 B. With respect to oaths:

19 (1) Before testifying, every witness shall be required to declare that he will
20 testify truthfully by oath or affirmation.

21 (2) Any member of the commission may administer oaths or affirmations.

22 C. All pleadings filed with the commission must be filed in the commission's
23 office. Filings may not be made by facsimile transmission. Other than pursuant to
24 an order to file a pleading by a specific date, for a pleading to be considered at a
25 commission meeting, it must be filed with the commission more than seven days
26 prior to such meeting.

27 D. Special counsel, the respondent prosecutor, or legal counsel for the
28 respondent prosecutor may prepare and submit to the commission in advance of a
29 scheduled hearing a bench book of exhibits and other materials that may be used at

1 the hearing concerning the allegations of misconduct or incapacity contained in the
2 notice of hearing in the case, or proposed findings of fact and conclusions of law for
3 consideration by the commission.

4 E. The failure or refusal of a prosecutor to cooperate in an investigation, or
5 the use of dilatory practices, frivolous or unfounded responses or arguments, or other
6 uncooperative behavior may be considered by the commission in determining
7 whether or not to recommend impeachment to the Louisiana House of
8 Representatives.

9 F. The chair, in his discretion, may name one commission member to serve
10 as case manager once a notice of hearing has been filed concerning a prosecutor.
11 The case manager's purpose is to facilitate movement of the case through the process
12 and to address procedural problems and issues. The case manager shall not discuss
13 the merits of the case with special counsel, legal counsel for the prosecutor, or with
14 the prosecutor himself.

15 G. Motions made prior to hearing must be made in writing and filed with the
16 commission's office. Except in extraordinary circumstances as determined by the
17 chair, the commission decides motions based upon the written pleadings filed, and
18 oral argument is not permitted. Upon receipt of service of a written motion, the
19 respondent prosecutor, legal counsel for the respondent prosecutor, or the special
20 counsel shall respond immediately. In order to determine a deadline for responding,
21 the respondent prosecutor, legal counsel for the respondent prosecutor, or the special
22 counsel may contact the commission so a deadline may be set for a response.
23 Because all pleadings to be considered at a meeting of the commission must be filed
24 at least seven days prior to the meeting, if a motion is filed on the seventh day before
25 a meeting and a responsive pleading is appropriate, the commission may allow the
26 responder to file a pleading within a short time period, not less than three days prior
27 to the upcoming meeting, or delay making a decision on the motion and the response
28 thereto until a date after the upcoming commission meeting.

1 H. Prior to a hearing, the special counsel and the legal counsel for the
2 respondent prosecutor, or the respondent prosecutor if he has no attorney, shall meet
3 to review exhibits that each side proposes to introduce into evidence at the hearing.
4 Following such meeting, and at least ten days prior to the scheduled hearing, the
5 special counsel and the legal counsel for the respondent prosecutor, or the respondent
6 prosecutor if he has no attorney shall file a memorandum of understanding with
7 regard to the proposed exhibits, indicating no objection to the proposed exhibits, or
8 stating with specificity any objections either counsel may have. In the case of a
9 failure by legal counsel, or the respondent prosecutor if he has no attorney, to agree
10 to the memorandum of understanding concerning the proposed exhibits, such
11 objecting counsel, or the respondent prosecutor if he has no attorney, may make a
12 separate filing as to his position as to the exhibits of opposing counsel. Failure to
13 make a timely filing, whether the preferred memorandum of understanding or a
14 separate submission, may result in the hearing officer or the commission refusing to
15 accept any exhibits of the non-filing party into evidence, although such excluded
16 exhibits may be proffered for review by the commission, the House of
17 Representatives, and the Senate.

18 §5999. Conduct of hearings by the commission, admissibility of evidence; no
19 recording of proceedings

20 A. The chair shall preside over hearings to inquire into allegations of
21 misconduct or incapacity contained in a notice of hearing concerning a prosecutor.
22 The chair shall conduct the proceedings, rule on objections to evidence, subject to
23 being overruled by a majority of members present at the hearing or at a subsequent
24 deliberation. If a commission member wishes to discuss an evidentiary ruling by the
25 chair, such discussion and vote of the commission members with respect to the
26 challenged ruling shall be conducted outside of the presence of the parties and their
27 legal counsel. The chair may defer ruling on an objection and admit evidence
28 subject thereto.

1 B. Hearings to inquire into allegations of misconduct or incapacity contained
2 in a notice of hearing concerning a prosecutor shall proceed in the following order,
3 subject to change, which may include eliminating statements of both special counsel
4 and the prosecutor, in the discretion of the chair:

5 (1) Brief opening statements by special counsel and the prosecutor whose
6 conduct is the subject of the proceeding, in that order.

7 (2) All proposed exhibits of both special counsel and the prosecutor whose
8 conduct is the subject of the proceedings shall be numbered and marked, with a list
9 of the exhibits attached. All exhibits shall be introduced into evidence in globo at the
10 commencement of the hearing, except in the case of objections to admissibility. The
11 chair may either rule on any objection to the admissibility of one or more exhibits
12 or defer the ruling until a later specific time in the proceedings. When an audio or
13 video tape constitutes an exhibit, except in exigent circumstances, in the discretion
14 of the chair, such tape must be introduced along with a transcription thereof made
15 by a certified court reporter.

16 (3) Presentation of evidence by special counsel and the prosecutor whose
17 conduct is the subject of the proceeding, in that order.

18 (4) Presentation of evidence by special counsel in rebuttal.

19 (5) Argument by special counsel and by the prosecutor whose conduct is the
20 subject of the proceeding and then rebuttal by special counsel, in that order, unless
21 a party's request to adjust the order is granted by the commission.

22 C. To support a recommendation of impeachment to the House of
23 Representatives, special counsel shall establish the grounds therefor by the standard
24 of clear and convincing evidence.

25 D. Witnesses shall be subject to direct examination, cross examination, and
26 redirect examination. Redirect examination shall be limited to matters inquired into
27 on cross examination. The commission may permit inquiry into new matters on
28 redirect subject to the right of the other party to conduct cross examination of the
29 witness on the new matters. A witness who appears but refuses to testify without

1 proper cause shall be in contempt of the commission and may be referred to the
2 Louisiana Legislature for contempt hearings.

3 E. Testimony regarding the character of a respondent prosecutor shall be
4 taken solely by affidavit except on a showing of good cause in the discretion of the
5 commission, in which case the commission may permit live testimony. Testimony
6 by prosecutors other than the respondent prosecutor, or employees of the respondent
7 prosecutor's office, that the respondent did or did not engage in misconduct will not
8 be admitted into evidence, the commission itself being vested with the sole authority
9 to make such a determination as part of its recommendation to the House of
10 Representatives. If subpoenaed to testify, a prosecutor other than the respondent, or
11 an employee of the respondent prosecutor's office, may be called as a witness to
12 testify to relevant facts about the underlying basis for the complaint that gave rise to
13 the allegations of misconduct or incapacity contained in the notice of hearing or to
14 otherwise give relevant factual testimony to try to provide to the commission a
15 contextual perspective about the respondent's conduct. The commission does not
16 deem such testimony by a prosecutor to be "expert testimony".

17 F.(1) The commission shall not be bound by the rules of evidence and may
18 admit material and relevant evidence, including hearsay. The principles underlying
19 the Louisiana Code of Evidence shall serve as a guide to the admissibility of
20 evidence in hearings before the commission. The specific exclusionary rules and
21 other provisions shall be applied only to the extent that they tend to promote the
22 purposes of proceedings before the commission, in the discretion of the chair or the
23 presiding member. Nothing shall prevent the introduction of sworn testimony from
24 administrative proceedings, civil or criminal trials, or hearings of a contradictory
25 nature in any of the following circumstances:

26 (2) Where the respondent prosecutor has cross-examined or had the
27 opportunity to cross-examine the witnesses whose testimony is sought to be
28 introduced.

1 (3) Where the parties have stipulated to the admissibility of the sworn
2 testimony.

3 (4) Where the sworn testimony is being introduced at the hearing for
4 impeachment or as evidence of a failure to cooperate with the investigation.

5 (5) The certified transcripts of all proceedings over which the respondent
6 prosecutor has presided are admissible.

7 G. If the hearing is held before the commission, the commission may
8 entertain a motion for dismissal of the case by the respondent prosecutor, or legal
9 counsel for the respondent prosecutor, at the time the special counsel rests or at the
10 close of all the evidence, on the ground that the evidence is insufficient to prove the
11 allegations of misconduct or incapacity contained in the notice of hearing by a clear
12 and convincing standard. The ruling on the motion for dismissal shall be made by
13 the commission.

14 H. Special counsel may enter into joint proposed stipulations of fact with the
15 respondent prosecutor and the respondent prosecutor's legal counsel.

16 I. Special counsel, the respondent prosecutor, and the respondent
17 prosecutor's legal counsel may enter into joint recommendations as to conclusions
18 of law for submission to the commission. The commission shall not be bound to
19 accept such joint recommendations as to legal conclusions, and may reject them
20 without comment.

21 J. When the commission rules against the admissibility of any testimonial
22 evidence, it shall permit the party offering the evidence to submit the evidence by
23 deposition taken pursuant to the provisions of the Louisiana Code of Civil Procedure.
24 The commission may, in its discretion, allow a party to make a sworn proffer of
25 testimony during a break in the formal proceedings when the commission is not
26 present. The party requesting the proffer of testimony during such break shall pay
27 all costs, including court reporter and hearing room costs, associated with the proffer.
28 When the commission rules against the admissibility of any documentary evidence,
29 it shall permit the party offering the evidence to proffer it into the record. Proffers

1 of testimonial evidence shall be submitted within thirty calendar days subsequent to
2 the completion of the hearing, and proffers of documentary evidence shall be
3 submitted by the completion of the hearing. Proffered evidence shall be filed into
4 the record within a separate volume of proffered exhibits and shall not be included
5 within the main volume of the record unless the commission grants the motion of a
6 party or on its own motion determines that the proffered evidence shall be admitted.
7 No counsel to a proceeding before the commission shall refer to the substance of
8 proffered testimony or documentary evidence unless the commission has
9 affirmatively voted to admit the proffered evidence. This prohibition does not
10 preclude a party from referencing proffered evidence within a motion to the
11 commission to admit the excluded evidence.

12 K. Following a hearing, the commission shall not accept any further filings
13 or pleadings, except in the case where the commission has granted specific authority
14 to either special counsel or to the prosecutor whose conduct is at issue to file a
15 pleading, which permission shall include a certain number of days in which to submit
16 the filings or pleadings. Any unauthorized filing or pleading submitted after a
17 hearing will not become part of the record of the proceeding and will not be
18 considered by the commission in its deliberations in a particular case.

19 L. Unless authorized by the commission, no camera, recording equipment,
20 or other type of electrical or electronic device shall be brought into the premises
21 where a hearing of the commission is being conducted or used to record such
22 proceedings.

23 §6000. Conduct of hearings by a hearing officer

24 A. The Louisiana Supreme Court may designate no less than ten and no more
25 than thirty sitting, former, or retired judges to serve as hearing officers to hear and
26 report to the commission. Such hearing officer shall be empowered to conduct
27 hearings in lieu of the commission, administer oaths or affirmations, subpoena
28 witnesses, compel their attendance, examine them under oath or affirmation and

1 require the production of any books, records, documents, or other evidence that the
2 hearing officer may deem relevant or material to the subject of the hearing.

3 B. Random allotment. From the hearing officer designees of the court, the
4 commission shall select a hearing officer for each case by random allotment to
5 conduct hearings. In order to help insure that the hearing officers receive an
6 equivalent number of cases, any designated hearing officer to whom a case has been
7 randomly allotted shall not be included in the next four case allotments in which the
8 hearing officer is eligible to serve.

9 C. Exceptions and motions; hearing officer bound by Code of Judicial
10 Conduct.

11 (1) The commission shall decide all exceptions and the following motions:
12 (a) any motion which would be determinative of the merits of the case; (b) a motion
13 to confirm or disaffirm the findings of the hearing officer; (c) a motion made prior
14 to the appointment of the hearing officer, except that the commission may refer such
15 motion to the hearing officer when such referral is not inconsistent with the other
16 provisions of this Section; and a motion to proceed without appointing a hearing
17 officer for a particular proceeding, as provided by this Section.

18 (2) In each case where the commission is designated to decide a motion,
19 such decision shall be made by a majority of the commission at the next regularly
20 scheduled meeting, except that in cases where the hearing officer notifies the
21 commission of a motion which he believes should be decided expeditiously, the
22 hearing officer shall notify the commission in writing through its chief executive
23 officer, who shall poll the commission for disposition on the motion.

24 (3) The designated hearing officer may decide all other motions. All
25 motions shall be in writing and there shall be no absolute right to oral argument,
26 which shall only be had in the discretion of the hearing officer, as to motions to be
27 heard by him.

28 (4) Motions for the disqualification or recusal of a hearing officer are to be
29 made to the designated hearing officer within ten calendar days of the parties' receipt

1 of notification of the appointment of the hearing officer. If the hearing officer deems
2 the recusal motion meritless, he shall provide written reasons therefor and the motion
3 shall be automatically referred to the commission for decision at the next regularly
4 scheduled meeting, except where the respondent prosecutor, legal counsel for the
5 respondent prosecutor, or the office of special counsel withdraws the request for
6 disqualification after reviewing the hearing officer's reasons. If the motion is
7 pending, all proceedings will be stayed until the commission has rendered its
8 decision.

9 (5) In deciding a motion, the hearing officer shall not engage in ex parte
10 communications with the special counsel or with the respondent prosecutor and legal
11 counsel for the respondent prosecutor. In this regard, as to exceptions, motions, and
12 all other matters, during the time the hearing officer is serving with regard to notices
13 of hearing filed, the hearing officer shall be subject to the Code of Judicial Conduct.
14 Retired and former judges who serve as hearing officers shall be subject to the Code
15 of Judicial Conduct to the same extent that the code applies to retired judges.

16 D. The conduct of hearings. The hearing officer shall set a prompt hearing
17 date; regulate the course of the hearing; make appropriate rulings; set the time for
18 adjourned or continued hearings and fix the time for filing proposed findings, briefs,
19 and other documents; and shall have such other authority as specified by the
20 commission, not inconsistent with the provisions of this rule. The respondent
21 prosecutor who is the subject of the hearing, legal counsel for the respondent
22 prosecutor, and the special counsel shall be afforded a reasonable opportunity to
23 present to the hearing officer written argument on issues of law and fact, including
24 but not limited to briefs or proposed findings of facts and conclusions of law. The
25 respondent prosecutor, legal counsel for the respondent prosecutor, and the special
26 counsel may file briefs and/or proposed findings with the hearing officer at the office
27 of the commission no later than thirty days after their receipt of the transcript of the
28 hearing. For good cause, the hearing officer may grant a reasonable extension or
29 may shorten the period. If the hearing is held before a hearing officer, the

1 respondent prosecutor, or legal counsel for the respondent prosecutor, may make
2 such a motion for dismissal at the close of all the evidence.

3 E. Proposed findings of fact and conclusions of law. The hearing officer
4 shall submit a report to the commission with proposed findings of fact and
5 conclusions of law. The commission shall review the report de novo and may on its
6 own motion remand the case to the hearing officer for the taking of further evidence
7 on any issue presented by the notice of hearing. No recommendation shall be made
8 with respect to a sanction to be imposed by the commission. The hearing officer
9 shall endeavor to submit such report:

10 (1) No later than thirty days after receipt of the briefs or proposed findings
11 of fact and conclusions of law referred to in Subsection (D) of this Section; or

12 (2) No later than thirty days after the failure of the respondent, legal counsel
13 for the respondent prosecutor, or the special counsel to file such brief or proposed
14 findings of fact and conclusions of law within the time prescribed in Subsection (D)
15 of this Section. A copy of the hearing officer's report shall be sent to the respondent
16 prosecutor, legal counsel for the respondent prosecutor, and the special counsel.

17 F. Procedure to consider hearing officer's proposed findings of fact and
18 conclusions of law. The commission shall consider the hearing officer's report
19 and/or agreed statement of uncontested material facts and shall provide reasonable
20 opportunity for the submission of briefs and oral argument by the respondent
21 prosecutor, legal counsel for the respondent prosecutor, and the special counsel with
22 respect to such report or agreed statement of uncontested material facts and with
23 respect to possible sanctions. The respondent prosecutor, or legal counsel for the
24 respondent prosecutor, may request an appearance before the commission to make
25 a statement about the case, and the commission, on its own motion, may require the
26 respondent prosecutor, or legal counsel for the respondent prosecutor, to appear to
27 answer questions about the allegations pending or about the hearing officer's report
28 or about any stipulations of fact. The commission may require any witness who
29 appeared before the hearing officer to appear before the commission for questioning.

1 The respondent prosecutor, legal counsel for the respondent prosecutor, and the
2 special counsel may ask questions of the prosecutor and any other witnesses who
3 appear before the commission, but such questioning shall be limited to the subject
4 matter of the examination by the commission and shall not exceed the amount of
5 time allocated for such questioning in the order notifying the parties of the
6 proceedings before the commission. Each side shall be given a set amount of time,
7 as set forth in the order, to present an opening statement, a closing statement, or a
8 combination of the two, and may choose how to allocate their time, subject to the
9 discretion of the chair to grant additional time as needed.

10 G. Stipulations. Special counsel to the commission may enter into proposed
11 stipulations of fact with the respondent prosecutor and the respondent prosecutor's
12 legal counsel as to some or all of the allegations contained in the notice of hearing.
13 If the proposed stipulations relate to all factual allegations in the notice of hearing,
14 they must be approved by the commission, even if the case is pending before a
15 hearing officer. If the proposed stipulations relate to some but not all of the factual
16 allegations in the notice of hearing, the stipulations need not be approved by the
17 hearing officer or the commission.

18 H. Remuneration. A retired or former judge who serves as a hearing officer
19 shall be entitled to remuneration for his services in the same manner as the court
20 compensates retired judges.

21 §6001. Voting; polls

22 A. Each commission member present at a meeting of the commission shall
23 vote in favor of or in opposition to each motion called for a vote during a
24 commission meeting or other proceeding, except when such member has grounds for
25 recusal and has actually recused himself in the matter. Abstention from voting
26 should only be exercised in exceptional circumstances, such as when a new member
27 commences service and a vote is called upon a matter not reviewed by the new
28 member.

1 B. The chair shall vote on all matters submitted to the commission in the
2 same manner as any other commission member.

3 C. A vote of a majority of the commission is required to issue closure letters
4 and letters of reminders, cautions, and admonishments.

5 D. There shall be no voting by proxy by any commission member. Except
6 as set forth in Subsection E of this Section, a commission member who was not
7 present either in person or by teleconference at a meeting where a particular issue
8 was discussed or heard shall not be entitled to vote on that particular issue or matter
9 previously submitted for review where the vote is taken at a subsequent meeting.

10 E. In the case where a commission hearing is convened and the term of a
11 commission member expires or otherwise terminates prior to deliberation and vote
12 on the matters heard, the successor to the outgoing commission member may vote
13 on such matters only if such successor member has read in full the transcript of the
14 relevant hearing. Further, in the case of a hearing or other appearance of a
15 prosecutor where a full transcript of the proceeding is prepared, a commission
16 member who is not present at the hearing or other appearance may vote on the matter
17 after reviewing the entire transcript.

18 F. Routine business of the commission, including authorization of an
19 investigation requiring approval of the members, may be transacted by a
20 videoconference, teleconference, or other poll of at least eight members, with at least
21 seven members agreeing on a course of action. No notice of hearing shall be
22 instituted except upon deliberation at a commission meeting.

23 G. Following a decision to issue a notice of hearing, drafts of the notice of
24 hearing shall be circulated to the members, who shall indicate a vote of approval or
25 disapproval by mail or any other means approved by at least seven members of the
26 commission.

27 §6002. Confidentiality, communications, and media communications

28 A. Every effort shall be made by members of the commission to keep
29 confidential the fact that a complaint has been made or that an investigation is taking

1 place. All commission proceedings, meetings, meeting agendas and materials,
2 discussions, deliberations, and communications among commission members are
3 confidential and should not be disclosed to any person, including respondent
4 prosecutors or legal counsel for respondent prosecutors, other than commission
5 members or staff. No statement may be issued by any member of the commission,
6 or by any staff member, or by special counsel, concerning a particular complaint or
7 investigation until and only when the commission makes a recommendation to the
8 House of Representatives for impeachment of the respondent prosecutor.

9 B. All documents filed with, and evidence and proceedings before the
10 commission or its hearing officers are confidential. The recommendation from the
11 commission to the House of Representatives for impeachment of the respondent
12 prosecutor, along with the corresponding record submitted to the House of
13 Representatives, and proceedings before the Senate are not confidential.

14 C. The confidentiality of this the provisions of this Section shall not be
15 applicable to matters that are pending before the commission when a prosecutor
16 retires or resigns as district attorney and thereafter qualifies to run for another
17 elective public office. When a retired or resigned prosecutor qualifies for any
18 elective office, all of the following documents and information in the custody of the
19 commission, relating to matters that were not disposed of by the commission at the
20 time of the prosecutor's retirement or resignation, shall be subject to public
21 disclosure:

22 (1) Any open or pending complaints filed against the prosecutor.

23 (2) Any open or pending complaints filed against the prosecutor.

24 (3) Any response by the prosecutor to the initial inquiry by the commission
25 to the pending complaint(s).

26 (4) Any formal charges or notices of hearing authorized by the commission.

27 (5) Any answers or exceptions to the formal charges or notices of hearing.

1 (6) Any stipulations of fact that have been agreed to by special counsel and
2 the prosecutor and that have been approved by the commission, if such approval is
3 required.

4 (7) Any joint recommendations with respect to legal conclusions and
5 recommendations as to prosecutorial discipline that have been accepted by the
6 commission.

7 (8) The transcript of any hearing before the commission or the hearing
8 officer.

9 (9) Any evidence introduced at the hearing before the commission or the
10 hearing officer.

11 (10) Any written findings of fact and conclusions of law that are authored
12 by the commission or the hearing officer.

13 D. The commission's investigatory and deliberation materials, and the
14 hearing officer's deliberation materials, shall remain confidential. The provisions of
15 this Subsection applies only to matters that were pending before the commission
16 when the prosecutor retired or resigned from public office and thereafter qualifies
17 to run for another elective public office. Confidentiality shall be maintained as to all
18 matters that had been disposed of or were closed by the commission at the time of
19 the prosecutor's retirement or resignation.

20 E. No commission member shall have private communications with the
21 special counsel, any respondent prosecutor, or legal counsel for any respondent
22 prosecutor, about any pending open or investigation files outside of the presence of
23 the full commission.

24 F. No respondent prosecutor or legal counsel for the respondent prosecutor
25 shall contact a commission member directly concerning any complaint, investigation,
26 or pending commission matter. Any attempt to do so will be considered an unethical
27 ex parte communication. All correspondence or other written communications to be
28 provided to commission members shall be addressed to the chief executive officer
29 for processing and response.

1 G. No commission member may make or respond to contacts with the media,
2 the general public, or persons involved in commission proceedings concerning
3 allegations, investigations, or other commission proceedings, or the administration
4 of the commission, unless so authorized by the commission. Such contacts made to
5 a commission member should be referred to the chief executive officer, who shall
6 respond at his discretion, or direct his designee to respond. In the event of the
7 unavailability of the chief executive officer at the time a response should be made,
8 the chair may respond for the commission. This does not preclude commission
9 members or the commission's specific designee from publicly discussing general,
10 non-confidential matters concerning the commission, unrelated to a specific case,
11 such as its purpose, history, or composition.

12 H. The commission, or any other person authorized by the commission, may
13 give an oath or affirmation of secrecy to any investigator, witness, clerk, deponent,
14 or any other person involved in a hearing or investigation.

15 I. None of the following actions permitted to be taken by the commission,
16 the House of Representatives, or the Senate shall be deemed a violation of
17 confidentiality:

18 (1) After a notice of hearing is filed, the House of Representatives or Senate,
19 in its discretion, releases confidential information upon a written request for a waiver
20 by the respondent prosecutor or legal counsel for the respondent prosecutor.

21 (2) If public reports concerning a commission proceeding result in
22 substantial unfairness to the prosecutor involved in the proceeding, including
23 unfairness resulting from reports which are false or materially misleading or
24 inaccurate, the involved prosecutor may submit a proposed statement of clarification
25 and correction to the commission and request its issuance. The commission shall
26 either issue the requested statement, advise the prosecutor in writing that it declines
27 to issue the requested statement, or issue a modified statement.

28 (3) In any case in which the subject matter becomes public, through
29 independent sources or through a waiver of confidentiality, the commission may

1 issue statements, as it considers appropriate, in order to confirm the pendency of the
2 investigation, clarify the procedural aspects of the disciplinary proceedings, and
3 explain the right of the prosecutor to a fair hearing without prejudice.

4 (4) The commission may make otherwise confidential records of disciplinary
5 proceedings available to:

6 (a) Law enforcement agencies acting within the scope of their lawful
7 authority when confidential records relate to possible criminal misconduct. Nothing
8 in this Subparagraph compels the commission to make confidential records available
9 without a subpoena or court order if the commission chooses not to exercise the
10 discretion granted in this Subparagraph to make those confidential records available.

11 (b) The Judges and Lawyers Assistance Program, when the commission
12 refers a prosecutor to that program in connection with a proceeding pending before
13 the commission. All information disclosed by the commission pursuant to this
14 provision shall remain confidential unless confidentiality is lost in some other
15 manner, such as by the filing of a recommendation of discipline by the commission
16 with this court.

17 (5) When the commission receives information concerning a threat to the
18 safety of any person or persons, information concerning such a threat may be
19 provided to the person threatened, to persons or organizations responsible for the
20 safety of the person threatened, and to law enforcement or any appropriate
21 prosecutorial agency.

22 (6) If a prosecutor who is the subject of confidential proceedings before the
23 commission is exonerated and wishes to seek reimbursement of costs or other
24 expenses associated with the commission proceedings from public funds, the
25 prosecutor may submit a written request to the commission for a waiver of
26 confidentiality for that purpose, and such request will be forwarded to the House of
27 Representatives or Senate for consideration. It is not a breach of confidentiality for
28 a respondent prosecutor to disclose information regarding a complaint to his attorney
29 or private insurer.

1 (7) The commission may provide documents, evidence, and information
2 from proceedings to the Louisiana Attorney Disciplinary Board in appropriate cases
3 when approved by the House of Representatives or Senate.

4 §6003. Chair, vice chair, chief executive officer, and legal counsel

5 A. The chair shall be elected by a majority of the members of the
6 commission and shall serve a term of one year beginning with the date he takes
7 office. No member of the commission may serve as chair for more than one year
8 during the member's four-year term. The commission shall also elect a vice-chair
9 who shall serve as chair whenever the chair is absent, recused, or disabled. In
10 addition to the other responsibilities of the chair as set forth in these rules, the chair
11 shall preside at meetings and shall decide administrative matters and requests
12 presented to the commission consistent with its established policies. It shall be the
13 duty of the vice chair to review reports on the status of the docket submitted by
14 special counsel, and use all reasonable efforts to keep the docket current.

15 B. The chief executive officer shall at all times conduct himself in a
16 dignified manner befitting an officer of the court. The chief executive officer shall
17 have the duty to all of the following:

18 (1) Take any action on behalf of the commission that is authorized by these
19 rules, including review and signing of subpoenas and notices of hearing.

20 (2) Attend commission meetings and be present during deliberations of the
21 commission.

22 (3) Advise the commission with respect to the issuance of notices of hearing,
23 considering investigations, recommendations to the House of Representatives with
24 regard to impeachment, and any other matter on which the commission must make
25 a decision or ruling.

26 (4) Supervise special counsel and hearing officer counsel, as directed by the
27 chair.

28 (5) Provide management support in the daily operations of the commission
29 and the special counsel, as directed by the chair.

1 (6) Perform such other duties as the commission may direct.

2 C. The commission shall have on its staff at least one special counsel, to be
3 engaged primarily in conducting inquiries into, and investigation of complaints
4 submitted to the commission and the presentation of evidence and arguments to the
5 commission in cases in which a notice of hearing alleging prosecutorial misconduct
6 or incapacity has been filed. When the commission recommends discipline, special
7 counsel also presents evidence and arguments to the House of Representatives or
8 Senate.

9 (1) Special counsel shall have the duty to do all of the following:

10 (a) Receive and screen complaints, conduct preliminary inquiries and
11 recommend dispositions of such complaints to the commission without further
12 inquiry, and, if authorized by the commission, conduct full investigations to seek
13 evidence that supports and evidence that disproves the allegations contained in the
14 complaint, make recommendations to the commission on the disposition of
15 complaints after full investigation, prepare notices of hearing when directed to do so
16 by the commission, present evidence and arguments in support of the allegations
17 specified in the notice of hearing before the hearing officer, including oral argument,
18 filing of briefs, and the submission of proposed findings of fact and conclusions of
19 law and before the commission including oral argument, filing of briefs, and the
20 submission of proposed findings of fact, conclusions of law and recommendations
21 for discipline, and file briefs and other appropriate pleadings or submissions for the
22 commission and orally argue the commission's position to the House of
23 Representatives.

24 (b) Maintain records of the operations of the special counsel's office,
25 including records of complaints, screenings, investigations, and notices of hearing
26 with regard to prosecutor discipline.

27 (c) Compile statistics to aid in the administration of commission business,
28 with respect, but not limited, to logging of all complaints received, investigative
29 files, and statistical summaries of docket processing and case disposition. In this

1 regard, special counsel shall submit to the chair and vice chair of the commission at
2 least quarterly, and more frequently if requested by the chair or vice chair, a list of
3 outstanding matters before the commission, which list shall include sufficient
4 information to indicate the nature of the pending matter and the status thereof as of
5 the time of the report.

6 (d) Perform such other duties as the commission may direct.

7 (2) Special counsel shall have the duty to do all of the following:

8 (a) Shall not be present during any deliberations of the commission with
9 respect to the decision to issue a notice of hearing, the commission's
10 recommendation of impeachment to the House of Representatives, or any other
11 decision pertaining to a particular prosecutor following the filing of a notice of
12 hearing.

13 (b) Shall not engage in ex parte communications with the commission as a
14 whole or with any individual commission member as to a complaint against a
15 prosecutor from the time a notice of hearing is filed and so long as any such matter
16 remains pending before the commission, except as may be necessary for scheduling
17 purposes; and shall not engage in private communications with individual
18 commission members about any pending open or investigation files outside of the
19 presence of the full commission, provided, however, the following communications
20 are authorized: communications concerning a matter in which the commission
21 member is the complainant, a witness, or the respondent; communications with the
22 chair or vice chair regarding administrative matters; communications expressly
23 authorized by the commission or the chief executive officer. Both special counsel
24 and the members of the commission shall take all necessary steps to avoid such ex
25 parte communications.

26 (c) Shall at all times conduct himself in a dignified manner befitting an
27 officer of the court.

28 D. The commission may also have on its staff a commission counsel, whose
29 primary function would be to advise the commission with respect to matters coming

1 before the commission, including those presented by special counsel, and to draft
2 written findings of fact and conclusions of law, orders, correspondence, and other
3 documents required by the commission, and a hearing officer counsel, whose
4 primary function would be to advise the hearing officers assigned to cases in which
5 a notice of hearing has been filed, with respect to matters coming before them and
6 to draft the hearing officer's proposed findings of fact and conclusions of law, orders,
7 correspondence, and other documents required by the hearing officer, including
8 commission meeting minutes.

9 §6004. Recusal or disqualification

10 A. A commission member shall recuse himself in any matter in which
11 recusal would be required by a judge under the Code of Judicial Conduct or where
12 his impartiality might reasonably be questioned. In all other cases, a member shall
13 not recuse himself. A commission member is automatically recused from any matter
14 in which he is the complainant or the respondent; his family member is a
15 complainant or respondent; or he has any financial relationship with the complainant
16 or respondent, including, but not limited to, campaign contributions.

17 B. If a respondent prosecutor, legal counsel for the respondent prosecutor,
18 or special counsel believes there are grounds to recuse a commission member or a
19 member of the commission's staff, he may file with the commission a written motion
20 requesting such recusal. In the event the commission member does not recuse
21 himself in response, the motion to recuse shall be considered at the next regularly
22 scheduled commission meeting or may be decided by the commission by
23 videoconference, teleconference, or other poll, in the discretion of the chair or the
24 chief executive officer, as circumstances may require. The commission may, but
25 shall not be obligated to, grant a hearing on a motion to recuse. During deliberation
26 on the motion to recuse, the commission member or staff member whose recusal is
27 sought shall not be present or otherwise participate.

1 §6005. Budget

2 The chief executive officer shall prepare the annual budget of the commission
3 and shall thereafter supervise administration of funds, subject to recommendation
4 and approval by the commission.

5 §6006. Members and former members; disposition of files; no participation in
6 district attorney races

7 A. When a disciplinary matter before the commission has been closed or
8 otherwise terminated, each member of the commission shall maintain his file on that
9 matter for a period of seven years.

10 B. As soon as practicable after a commission member's term of membership
11 terminates, the former member shall deliver all commission files and documents in
12 his possession to commission staff or his successor.

13 C. After a period of seven years after a matter before the commission has
14 been closed or otherwise terminated, commission staff shall destroy all records
15 pertaining to the matter.

16 D. During a commissioner's term he shall not support any candidate for the
17 office of district attorney. Support for a candidate includes making a monetary or
18 in-kind contribution; giving gifts or paying for meals, transportation, or services;
19 public endorsement of the candidate and/or permitting his name to be used by
20 another in support of the candidate; reacting to or commenting about a candidate on
21 any social media sites or posts in a manner that a reasonable person could interpret
22 as an endorsement; or posting a campaign sign or other communication in support
23 of the candidate in his or her yard, structure, or on his vehicle.

24 §6007. Notice to prosecutor that the commission will recommend discipline; notice
25 to the press

26 As soon as practicable after the commission votes to submit to the House of
27 Representatives a recommendation of impeachment and has approved related written
28 findings of fact and conclusions of law, commission counsel shall prepare the record
29 of the commission for submission to the House of Representatives. Thereafter, the

1 respondent prosecutor shall receive at least seventy-two hours' prior notice, exclusive
2 of weekends and official holidays, of the anticipated submission. Such notice of
3 imminent submission shall be transmitted to the prosecutor by facsimile or other
4 electronic means of communication, if possible, and otherwise in writing in a manner
5 that will assure his receipt. In the discretion of the chief executive officer, a press
6 release may be prepared regarding the upcoming submission. If a press release will
7 issue, it shall be sent to the Associated Press, United Press International, and all other
8 applicable state and local news services at the same time. No member of the
9 commission or the commission's staff shall communicate to the press the fact of a
10 submission to the House of Representatives, and only the person or persons
11 designated by the commission to have media contact shall respond to any questions
12 from the press with respect to the filing.

13 §6008. Code of prosecutorial conduct

14 A. The function of the prosecutor.

15 (1) The office of prosecutor is charged with responsibility for prosecutions
16 in its jurisdiction.

17 (2) The prosecutor is an administrator of justice, an advocate, and an officer
18 of the court; the prosecutor must exercise sound discretion in the performance of his
19 functions.

20 (3) The duty of the prosecutor is to seek justice, not merely to convict.

21 (4) It is an important function of the prosecutor to seek to reform and
22 improve the administration of criminal justice.

23 (5) When inadequacies or injustices in the substantive or procedural law
24 come to the prosecutor's attention, he should stimulate efforts for remedial action.

25 (6) It is the duty of the prosecutor to know and be guided by the standards
26 of professional conduct as defined by applicable professional traditions, ethical
27 codes, and law in the prosecutor's jurisdiction.

28 (7) The prosecutor should make use of the guidance afforded by an advisory
29 council.

1 B. Conflicts of interest.2 (1) A prosecutor should avoid a conflict of interest with respect to his official
3 duties.4 (2) A prosecutor should not represent a defendant in criminal proceedings
5 in a jurisdiction where he is also employed as a prosecutor.6 (3) A prosecutor should not, except as law may otherwise expressly permit,
7 participate in a matter in which he participated personally and substantially while in
8 private practice or nongovernmental employment unless under applicable law no one
9 is, or by lawful delegation may be, authorized to act in the prosecutor's stead in the
10 matter.11 (4) A prosecutor who has formerly represented a client in a matter in private
12 practice should not thereafter use information obtained from that representation to
13 the disadvantage of the former client unless the rules of attorney-client
14 confidentiality do not apply or the information has become generally known.15 (5) A prosecutor should not, except as law may otherwise expressly permit,
16 negotiate for private employment with any person who is involved as an accused or
17 as an attorney or agent for an accused in a matter in which the prosecutor is
18 participating personally and substantially.19 (6) A prosecutor should not permit his or her professional judgment or
20 obligations to be affected by his own political, financial, business, property, or
21 personal interests.22 (7) A prosecutor who is related to another lawyer as parent, child, sibling,
23 or spouse should not participate in the prosecution of a person who the prosecutor
24 knows is represented by the other lawyer. Nor should a prosecutor who has a
25 significant personal or financial relationship with another lawyer participate in the
26 prosecution of a person who the prosecutor knows is represented by the other lawyer,
27 unless the prosecutor's supervisor, if any, is informed and approves or unless there
28 is no other prosecutor authorized to act in the prosecutor's stead.

1 (8) A prosecutor should not recommend the services of particular defense
2 counsel to accused persons or witnesses and should not make a referral that is likely
3 to create a conflict of interest. Nor should a prosecutor comment upon the reputation
4 or abilities of defense counsel to an accused person or witness who is seeking or may
5 seek such counsel's services unless requested by such person.

6 C. Public statements.

7 (1) A prosecutor should not make or authorize the making of an extrajudicial
8 statement that a reasonable person would expect to be disseminated by means of
9 public communication if the prosecutor knows or reasonably should know that it will
10 have a substantial likelihood of prejudicing a criminal proceeding.

11 (2) A prosecutor should exercise reasonable care to prevent investigators,
12 law enforcement personnel, employees, or other persons assisting or associated with
13 the prosecutor from making an extrajudicial statement that the prosecutor would be
14 prohibited from making under this standard.

15 D. Duty to respond to misconduct. Where a prosecutor knows that another
16 person associated with the prosecutor's office is engaged in action, intends to act or
17 refuses to act in a manner that is a violation of a legal obligation to the prosecutor's
18 office, a violation of law, or a violation of the attorney disciplinary code, the
19 prosecutor should follow the policies of the prosecutor's office concerning such
20 matters. If such policies are unavailing or do not exist, the prosecutor should ask the
21 person to reconsider the action or inaction which is at issue if such a request is aptly
22 timed to prevent such misconduct and is otherwise feasible. If such a request for
23 reconsideration is unavailing, inapt or otherwise not feasible or if the seriousness of
24 the matter so requires, the prosecutor should refer the matter to higher authority in
25 the prosecutor's office, including, if warranted by the seriousness of the matter,
26 referral to the chief prosecutor. If, despite the prosecutor's efforts in accordance with
27 this provision, the chief prosecutor insists upon action, or a refusal to act, that is
28 clearly a violation of law, the prosecutor may take further remedial action, including

1 revealing the information necessary to remedy this violation to other appropriate
2 government officials not in the prosecutor's office.

3 E. Relations with police.

4 (1) The prosecutor should provide legal advice to the police concerning
5 police functions and duties in criminal matters.

6 (2) The prosecutor should cooperate with police in providing the services of
7 the prosecutor's staff to aid in training police in the performance of their function in
8 accordance with law.

9 F. Relations with the courts and bar.

10 (1) A prosecutor should not intentionally misrepresent matters of fact or law
11 to the court.

12 (2) In contacts with judges, the prosecutor should carefully strive to preserve
13 the appearance as well as the reality of the correct relationship which professional
14 traditions, ethical codes, and applicable law require between attorneys and judges.

15 (3) A prosecutor should not engage in unauthorized ex parte discussions with
16 or submission of material to a judge relating to a particular case which is or may
17 come before the judge.

18 (4) A prosecutor should not fail to disclose to the tribunal any legal authority
19 in the controlling jurisdiction known to the prosecutor to be directly adverse to the
20 prosecutor's position and not disclosed by defense counsel.

21 (5) A prosecutor should strive to develop good working relationships with
22 defense counsel in order to facilitate the resolution of ethical problems and wrongful
23 convictions. In particular, a prosecutor should assure defense counsel that if counsel
24 finds it necessary to deliver physical items which may be relevant to a pending case
25 or investigation to the prosecutor the prosecutor will not offer the fact of such
26 delivery by defense counsel as evidence before a jury for purposes of establishing
27 defense counsel's client's culpability. However, nothing in this Paragraph shall
28 prevent a prosecutor from offering evidence of the fact of such delivery in a

1 subsequent proceeding for the purpose of proving a crime or fraud in the delivery of
2 the evidence.

3 G. Prompt disposition of criminal charges.

4 (1) A prosecutor should avoid unnecessary delay in the disposition of cases.

5 (2) A prosecutor should not fail to act with reasonable diligence and
6 promptness in prosecuting an accused.

7 (3) A prosecutor should not intentionally use procedural devices for delay
8 for which there is no legitimate basis.

9 (4) The prosecutorial function should be so organized and supported with
10 staff and facilities as to enable it to dispose of all criminal charges promptly.

11 (5) The prosecutor should be punctual in attendance in court and in the
12 submission of all motions, briefs, and other papers. The prosecutor should emphasize
13 to all witnesses the importance of punctuality in attendance in court.

14 (6) A prosecutor should not intentionally misrepresent facts or otherwise
15 mislead the court in order to obtain a continuance.

16 (7) A prosecutor should not carry a workload that, by reason of its excessive
17 size, interferes with the rendering of quality representation, endangers the interests
18 of justice in the speedy disposition of charges, or may lead to the breach of
19 professional obligations.

20 H. Literary or media agreements. A prosecutor, prior to conclusion of all
21 aspects of a matter, should not enter into any agreement or understanding by which
22 the prosecutor acquires an interest in literary or media rights to a portrayal or account
23 based in substantial part on information relating to that matter.

24 I. Investigative function of prosecutor.

25 (1) A prosecutor ordinarily relies on police and other investigative agencies
26 for investigation of alleged criminal acts, but the prosecutor has an affirmative
27 responsibility to investigate suspected illegal activity when it is not adequately dealt
28 with by other agencies.

1 (2) A prosecutor should not invidiously discriminate against or in favor of
2 any person on the basis of race, religion, sex, sexual preference, or ethnicity in
3 exercising discretion to investigate or to prosecute. A prosecutor should not use
4 other improper considerations in exercising such discretion.

5 (3) A prosecutor should not knowingly use illegal means to obtain evidence
6 or to employ or instruct or encourage others to use such means.

7 (4) A prosecutor should not discourage or obstruct communication between
8 prospective witnesses and defense counsel.

9 (5) A prosecutor should not advise any person or cause any person to be
10 advised to decline to give to the defense information that the defense has the right
11 to have.

12 (6) A prosecutor should not secure the attendance of persons for interviews
13 by use of any communication which has the appearance or color of a subpoena or
14 similar judicial process unless the prosecutor is authorized by law to do so.

15 (7) A prosecutor should not promise not to prosecute for prospective
16 criminal activity, except where such activity is part of an officially supervised
17 investigative and enforcement program.

18 (8) Unless a prosecutor is prepared to forego impeachment of a witness by
19 the prosecutor's own testimony as to what the witness stated in an interview or to
20 seek leave to withdraw from the case in order to present the impeaching testimony,
21 a prosecutor should avoid interviewing a prospective witness except in the presence
22 of a third person.

23 J. Relations with victims and prospective witnesses.

24 (1) A prosecutor should not compensate a witness, other than an expert, for
25 giving testimony. However, it is not improper to reimburse an ordinary witness for
26 the reasonable expenses of attendance upon court, attendance for depositions
27 pursuant to statute or court rule, or attendance for pretrial interviews. Payments to
28 a witness may be for transportation and loss of income, provided there is no attempt
29 to conceal the fact of reimbursement.

1 (2) A prosecutor should advise a witness who is to be interviewed of his
2 rights against self-incrimination and the right to counsel whenever the law so
3 requires. It is also proper for a prosecutor to so advise a witness whenever the
4 prosecutor knows or has reason to believe that the witness may be the subject of a
5 criminal prosecution. However, a prosecutor should not so advise a witness for the
6 purpose of influencing the witness in favor of or against testifying.

7 (3) The prosecutor should readily provide victims and witnesses who request
8 it information about the status of cases in which they are interested.

9 (4) The prosecutor should seek to insure that victims and witnesses who may
10 need protections against intimidation are advised of and afforded protections where
11 feasible.

12 (5) The prosecutor should insure that victims and witnesses are given notice
13 as soon as practicable of scheduling changes which will affect the victims' or
14 witnesses' required attendance at judicial proceedings.

15 (6) The prosecutor should not require victims and witnesses to attend judicial
16 proceedings unless their testimony is essential to the prosecution or is required by
17 law. When their attendance is required, the prosecutor should seek to reduce to a
18 minimum the time they must spend at the proceedings.

19 (7) The prosecutor should seek to insure that victims of serious crimes or
20 their representatives are given timely notice of judicial proceedings relating to the
21 victims' case; disposition of the case, including plea bargains, trial and sentencing;
22 and any decision or action in the case which results in the accused's provisional or
23 final release from custody. Where practical, the prosecutor should seek to insure that
24 victims of serious crimes or their representatives are given an opportunity to consult
25 with and to provide information to the prosecutor prior to the decision whether or not
26 to prosecute, to pursue a disposition by plea, or to dismiss the charges.

27 (8) The prosecutor should do all in his or her power to avoid issuing material
28 witness warrants whereby a witness or victim is incarcerated to compel testimony.
29 The avoidance of material witness warrants should be even stronger in cases where

1 victims are traumatized by the criminal activity inflicted on the victim, the victim has
2 been sexually abused by the aggressor, the victim is a domestic violence victim, or
3 the case in question is a misdemeanor.

4 K. Relations with expert witnesses.

5 (1) A prosecutor who engages an expert for an opinion should respect the
6 independence of the expert and should not seek to dictate the formation of the
7 expert's opinion on the subject.

8 (2) To the extent necessary, the prosecutor should explain to the expert his
9 role in the trial as an impartial expert called to aid the fact finders and the manner in
10 which the examination of witnesses is conducted.

11 (3) A prosecutor should not pay an excessive fee for the purpose of
12 influencing the expert's testimony or to fix the amount of the fee contingent upon the
13 testimony the expert will give or the result in the case.

14 L. Decision to charge.

15 (1) The decision to institute criminal proceedings should be initially and
16 primarily the responsibility of the prosecutor.

17 (2) Prosecutors should take reasonable care to ensure that investigators
18 working at their direction or under their authority are adequately trained in the
19 standards governing the issuance of arrest and search warrants and should inform
20 investigators that they should seek the approval of a prosecutor in close or difficult
21 cases.

22 (3) The prosecutor should establish standards and procedures for evaluating
23 complaints to determine whether criminal proceedings should be instituted.

24 (4) Where the law permits a citizen to complain directly to a judicial officer
25 or the grand jury, the citizen complainant should be required to present the complaint
26 for prior approval to the prosecutor, and the prosecutor's action or recommendation
27 thereon should be communicated to the judicial officer or grand jury.

28 M. Relations with grand jury.

1 (1) Where the prosecutor is authorized to act as legal advisor to the grand
2 jury, the prosecutor may appropriately explain the law and express an opinion on the
3 legal significance of the evidence but should give due deference to its status as an
4 independent legal body.

5 (2) The prosecutor should not make statements or arguments in an effort to
6 influence grand jury action in a manner which would be impermissible at trial before
7 a petit jury.

8 (3) The prosecutor's communications and presentations to the grand jury
9 should be on the record.

10 N. Quality and scope of evidence before grand jury.

11 (1) A prosecutor should only make statements or arguments to the grand jury
12 and only present evidence to the grand jury which the prosecutor believes is
13 appropriate or authorized under law for presentation to the grand jury. The
14 prosecutor shall not mischaracterize evidence. The prosecutor shall not allow false
15 testimony to stand uncorrected.

16 (2) In appropriate cases, the prosecutor may present witnesses to summarize
17 admissible evidence available to the prosecutor which the prosecutor believes he will
18 be able to present at trial. The prosecutor should also inform the grand jurors that
19 they have the right to hear any available witnesses, including eyewitnesses.

20 (3) No prosecutor should knowingly fail to disclose to the grand jury
21 evidence which tends to negate guilt or mitigate the offense.

22 (4) A prosecutor should recommend that the grand jury not indict if he
23 believes the evidence presented does not warrant an indictment under governing law.

24 (5) If the prosecutor believes that a witness is a potential defendant, the
25 prosecutor should not seek to compel the witness's testimony before the grand jury
26 without informing the witness that he may be charged and that the witness should
27 seek independent legal advice concerning his or her rights.

28 (6) The prosecutor should not compel the appearance of a witness before the
29 grand jury whose activities are the subject of the inquiry if the witness states in

1 advance that if called he will exercise the constitutional privilege not to testify,
2 unless the prosecutor intends to judicially challenge the exercise of the privilege or
3 to seek a grant of immunity according to the law.

4 (7) A prosecutor in presenting a case to a grand jury should not intentionally
5 interfere with the independence of the grand jury, preempt a function of the grand
6 jury, or abuse the processes of the grand jury.

7 (8) Unless the law of the jurisdiction so permits, a prosecutor should not use
8 the grand jury in order to obtain tangible, documentary, or testimonial evidence to
9 assist the prosecutor in preparation for trial of a defendant who has already been
10 charged by indictment or information.

11 (9) Unless the law of the jurisdiction so permits, a prosecutor should not use
12 the grand jury for the purpose of aiding or assisting in any administrative inquiry.

13 (10) Discretion as to noncriminal disposition. The prosecutor should
14 consider in appropriate cases the availability of noncriminal disposition, formal or
15 informal, in deciding whether to press criminal charges which would otherwise be
16 supported by probable cause; especially in the case of a first offender, the nature of
17 the offense may warrant noncriminal disposition. Prosecutors should be familiar
18 with the resources of social agencies which can assist in the evaluation of cases for
19 diversion from the criminal process.

20 O. Discretion in the charging decision.

21 (1) A prosecutor should not institute, or cause to be instituted, or permit the
22 continued pendency of criminal charges when the prosecutor knows that the charges
23 are not supported by probable cause.

24 (2) A prosecutor should not institute, cause to be instituted, or permit the
25 continued pendency of criminal charges in the absence of sufficient admissible
26 evidence to support a conviction.

27 (3) The prosecutor is not obliged to present all charges which the evidence
28 might support. The prosecutor should be less interested in increasing the number of

1 complaints accepted and more interested in ensuring complaints are valid and
2 substantiated by sufficient evidence.

3 (4) The prosecutor may in some circumstances and for good cause consistent
4 with the public interest decline to prosecute, notwithstanding that sufficient evidence
5 may exist which would support a conviction. Illustrative of the factors which the
6 prosecutor may properly consider in exercising his discretion are the prosecutor's
7 reasonable doubt that the accused is in fact guilty; the extent of the harm caused by
8 the offense; the disproportion of the authorized punishment in relation to the
9 particular offense or the offender; possible improper motives of a complainant;
10 reluctance of the victim to testify; cooperation of the accused in the apprehension or
11 conviction of others; and availability and likelihood of prosecution by another
12 jurisdiction.

13 (5) A prosecutor should not be compelled by his supervisor to prosecute a
14 case in which he has a reasonable doubt about the guilt of the accused.

15 (6) In making the decision to prosecute, the prosecutor should give no weight
16 to the personal or political advantages or disadvantages which might be involved or
17 to a desire to enhance his record of convictions.

18 (7) In cases which involve a serious threat to the community, the prosecutor
19 should not be deterred from prosecution by the fact that in the jurisdiction juries have
20 tended to acquit persons accused of the particular kind of criminal act in question.

21 (8) The prosecutor should not bring or seek charges greater in number of
22 degree than can reasonably be supported with evidence at trial or than are necessary
23 to fairly reflect the gravity of the offense.

24 (9) The prosecutor should not condition a dismissal of charges, nolle
25 prosequi, or similar action on the accused's relinquishment of the right to seek civil
26 redress unless the accused has agreed to the action knowingly and intelligently,
27 freely and voluntarily, and where such waiver is approved by the court.

28 P. Role in first appearance and preliminary hearing.

1 (1) A prosecutor who is present at the first appearance of the accused before
2 a judicial officer should not communicate with the accused unless a waiver of
3 counsel has been entered, except for the purpose of aiding in obtaining counsel or in
4 arranging for the pretrial release of the accused.

5 (2) A prosecutor should not fail to make reasonable efforts to assure that the
6 accused has been advised of the right to, and the procedure for obtaining, counsel
7 and has been given reasonable opportunity to obtain counsel.

8 (3) The prosecutor should cooperate in good faith in arrangements for release
9 under the prevailing system for pretrial release.

10 (4) The prosecutor should not seek to obtain from an unrepresented accused
11 a waiver of important pretrial rights, such as the right to a preliminary hearing.

12 (5) The prosecutor should not seek a continuance solely for the purpose of
13 mooting the preliminary hearing by securing an indictment.

14 (6) Except for good cause, the prosecutor should not seek delay in the
15 preliminary hearing after an arrest has been made if the accused is in custody.

16 (7) The prosecutor should ordinarily be present at a preliminary hearing
17 where such hearing is required by law.

18 Q. Disclosure of evidence by the prosecutor.

19 (1) A prosecutor should not intentionally fail to make timely disclosure to
20 the defense, at the earliest feasible opportunity, of the existence of all evidence or
21 information which tends to negate the guilt of the accused or mitigate the offense
22 charged or which would tend to reduce the punishment of the accused.

23 (2) A prosecutor should not fail to make a reasonably diligent effort to
24 comply with a legally proper discovery request.

25 (3) A prosecutor should not intentionally avoid pursuit of evidence because
26 he believes it will damage the prosecution's case or aid the accused.

27 R. Availability for plea discussions.

1 (1) The prosecutor should have and make known a general policy or
2 willingness to consult with defense counsel concerning disposition of charges by
3 plea.

4 (2) A prosecutor should not engage in plea discussions directly with an
5 accused who is represented by defense counsel, except with defense counsel's
6 approval. Where the defendant has properly waived counsel, the prosecuting
7 attorney may engage in plea discussions with the defendant, although, where
8 feasible, a record of such discussions should be made and preserved.

9 (3) A prosecutor should not knowingly make false statements or
10 representations as to fact or law in the course of plea discussions with defense
11 counsel or the accused.

12 S. Fulfillment of plea discussions.

13 (1) A prosecutor should not make any promise or commitment assuring a
14 defendant or defense counsel that a court will impose a specific sentence or a
15 suspension of sentence; a prosecutor may properly advise the defense what position
16 will be taken concerning disposition.

17 (2) A prosecutor should not imply a greater power to influence the
18 disposition of a case than is actually possessed.

19 (3) A prosecutor should not fail to comply with a plea agreement, unless a
20 defendant fails to comply with a plea agreement or other extenuating circumstances
21 are present.

22 T. Calendar control. Control over the trial calendar should be vested in the
23 court. The prosecuting attorney should advise the court of facts relevant in
24 determining the order of cases on the court's calendar.

25 U. Courtroom professionalism.

26 (1) As an officer of the court, the prosecutor should support the authority of
27 the court and the dignity of the trial courtroom by strict adherence to codes of
28 professionalism and by manifesting a professional attitude toward the judge,
29 opposing counsel, witnesses, defendants, jurors, and others in the courtroom.

1 (2) When court is in session, the prosecutor should address the court, not
2 opposing counsel, on all matters relating to the case.

3 (3) A prosecutor should comply promptly with all orders and directives of
4 the court, but the prosecutor has a duty to have the record reflect adverse rulings or
5 judicial conduct which the prosecutor considers prejudicial. The prosecutor has a
6 right to make respectful requests for reconsideration of adverse rulings.

7 (4) Prosecutors should cooperate with courts and the organized bar in
8 developing codes of professionalism for each jurisdiction.

9 V. Selection of jurors.

10 (1) The prosecutor should prepare himself prior to trial to discharge
11 effectively the prosecution function in the selection of the jury and the exercise of
12 challenges for cause and peremptory challenges.

13 (2) In those cases where it appears necessary to conduct a pretrial
14 investigation of the background of jurors, investigatory methods of the prosecutor
15 should neither harass nor unduly embarrass potential jurors or invade their privacy
16 and, whenever possible, should be restricted to an investigation of records and
17 sources of information already in existence.

18 (3) The opportunity to question jurors personally should be used solely to
19 obtain information for the intelligent exercise of challenges.

20 (4) A prosecutor should not intentionally use the voir dire to present factual
21 matter which the prosecutor knows will not be admissible at trial or to argue the
22 prosecution's case to the jury.

23 W. Relations with jury.

24 (1) A prosecutor should not intentionally communicate privately with
25 persons summoned for jury duty or impaneled as jurors prior to or during trial. The
26 prosecutor should avoid the reality or appearance of any such communications.

27 (2) The prosecutor should treat jurors with deference and respect, avoiding
28 the reality or appearance of showing favor by a show of undue solicitude for their
29 comfort or convenience.

1 (3) After discharge of the jury from further consideration of a case, a
2 prosecutor should not intentionally make comments to or ask questions of a juror for
3 the purpose of harassing or embarrassing the juror in any way which will tend to
4 influence judgment in future jury service.

5 X. Opening statement. The prosecutor's opening statement should be
6 confined to a statement of the issues in the case and the evidence the prosecutor
7 intends to offer which the prosecutor believes in good faith will be available and
8 admissible. A prosecutor should not allude to any evidence unless there is a good
9 faith and reasonable basis for believing that such evidence will be tendered and
10 admitted in evidence.

11 Y. Presentation of evidence.

12 (1) A prosecutor should not knowingly offer false evidence, whether by
13 documents, tangible evidence, or the testimony of witnesses, or fail to seek
14 withdrawal thereof upon discovery of its falsity. The prosecutor shall not
15 mischaracterize evidence. The prosecutor shall not allow false testimony to stand
16 uncorrected.

17 (2) A prosecutor should not knowingly and for the purpose of bringing
18 inadmissible matter to the attention of the judge or jury offer inadmissible evidence,
19 ask legally objectionable questions, or make other impermissible comments or
20 arguments in the presence of the judge or jury.

21 (3) A prosecutor should not permit any tangible evidence to be displayed in
22 the view of the judge or jury which would tend to prejudice fair consideration by the
23 judge or jury until such time as a good faith tender of such evidence is made.

24 (4) A prosecutor should not tender tangible evidence in the view of the judge
25 or jury if it would tend to prejudice fair consideration by the judge or jury unless
26 there is a reasonable basis for its admission in evidence.

27 (5) When there is any substantial doubt about the admissibility of such
28 evidence, it should be tendered by an offer of proof and a ruling obtained.

29 Z. Examination of witnesses.

1 (1) The interrogation of all witnesses should be conducted fairly, objectively,
2 and with due regard for the dignity and legitimate privacy of the witness, and without
3 seeking to intimidate or humiliate the witness unnecessarily.

4 (2) A prosecutor should not use the power of cross-examination to discredit
5 or undermine a witness if the prosecutor knows the witness is testifying truthfully.

6 (3) A prosecutor should not call a witness in the presence of the jury who the
7 prosecutor knows will claim a valid privilege not to testify.

8 (4) A prosecutor should not ask a question which implies the existence of a
9 factual predicate for which a good faith belief is lacking.

10 AA. Argument to the jury.

11 (1) In closing argument to the jury, the prosecutor should not intentionally
12 misstate the evidence or mislead the jury as to the inferences it may draw.

13 (2) The prosecutor should not express his personal belief or opinion as to the
14 truth or falsity of any testimony or evidence or the guilt of the defendant.

15 (3) The prosecutor should not make arguments calculated to appeal to the
16 prejudices of the jury.

17 (4) The prosecutor should refrain from argument which would divert the jury
18 from its duty to decide the case on the evidence.

19 BB. Facts outside the record. The prosecutor should not intentionally refer
20 to or argue on the basis of facts outside the record whether at trial or on appeal,
21 unless such facts are matters of common public knowledge based on ordinary human
22 experience or matters of which the court may take judicial notice.

23 CC. Comments by prosecutor after verdict. The prosecutor should not make
24 public comments critical of a verdict, whether rendered by judge or jury.

25 DD. Role in sentencing.

26 (1) The prosecutor should not make the severity of sentences the index of his
27 effectiveness.

1 (2) To the extent that the prosecutor becomes involved in the sentencing
2 process, he should seek to assure that a fair and informed judgment is made on the
3 sentence and to avoid unfair sentence disparities.

4 (3) Where sentence is fixed by the jury, the prosecutor should present
5 evidence on the issue within the limits permitted in the jurisdiction, but the
6 prosecutor should avoid introducing evidence bearing on sentence which will
7 prejudice the jury's determination of the issue of guilt.

8 EE. Information relevant to sentencing.

9 (1) The prosecutor should assist the court in basing its sentence on complete
10 and accurate information for use in the presentence report.

11 (2) The prosecutor should disclose to the court any information in the
12 prosecutor's files relevant to the sentence.

13 (3) If incompleteness or inaccuracy in the presentence report comes to
14 the prosecutor's attention, the prosecutor should take steps to present the complete
15 and correct information to the court and to defense counsel.

16 (4) The prosecutor should disclose to the defense and to the court at or prior
17 to the sentencing proceeding all unprivileged mitigating information known to the
18 prosecutor, except when the prosecutor is relieved of this responsibility by a
19 protective order of the tribunal.

20 §6009. District attorney-operated diversion programs; oversight and reporting

21 A. The commission shall be responsible for overseeing district
22 attorney-operated diversion programs statewide.

23 B. The commission shall have the authority to annually collect data related
24 to persons placed in district attorney-operated diversion programs, directly from the
25 district attorney's office in the applicable parish.

26 C. Such data collectable shall include demographic data of participants in
27 district attorney-operated diversion programs, including but not limited to all of the
28 following:

29 (1) Race, income, education level, employment, age, sex, and marital status;.

1 (2) The numbers of individuals who apply for the diversion program.

2 (3) The number of individuals who begin the diversion program.

3 (4) The number of individuals who successfully complete the diversion
4 program within a twelve-month period.

5 (5) The number of individuals who do not successfully complete the
6 diversion program within the same twelve-month period, but who are still
7 participating in the program.

8 (6) The number of individuals who did not complete the diversion program
9 within the twelve-month period and who have been prosecuted for the offense
10 committed.

11 (7) The number of individuals with fees fully or partially waived for
12 indigence.

13 (8) The number of individuals that still owe fees for participation in the
14 diversion program.

15 D. On an annual basis, the commission shall publically report the
16 accumulated data and any conclusions reached. The report shall not include any
17 personal or identifying data of diversion program participants.

18 §6010. Prosecutor performance accountability program; reporting

19 A. The commission shall direct every parish district attorney's office to
20 develop a performance accountability program to provide for regular reporting to the
21 citizens of Louisiana.

22 B. As part of the performance accountability program, the parish district
23 attorney's office shall institute yearly ethics training for all prosecutors. Such
24 training shall include extensive training on the requirement that the prosecution must
25 turn over all exculpatory evidence to the defendant in a criminal case.

26 C. As a part of the performance accountability program, every parish district
27 attorney's office must create an annual report comprised of all of the following
28 information related to the appropriate calendar year:

29 (1) Number of criminal court cases opened.

- 1 (2) Number of defendants charged.
- 2 (3) Number of felony cases opened.
- 3 (4) Number of misdemeanor cases opened.
- 4 (5) Number of new cases opened by section.
- 5 (6) Number of active criminal court cases at year end.
- 6 (7) Number of active criminal court cases by section at year end.
- 7 (8) Types of criminal cases opened.
- 8 (9) Number of cases resolved due to plea-bargaining.
- 9 (10) For every instance of a case resolved due to plea-bargaining, the initial
10 charge and the charge to which the defendant pled.
- 11 (11) Number of cases dismissed by declaration of nolle prosequi and reasons
12 for such dismissal.
- 13 (12) Number of cases dismissed by judges.
- 14 (13) Number of juveniles charged as adults.
- 15 (14) Demographics including gender, age, race, and income of new
16 defendants for the year.
- 17 (15) Demographics including gender, age, race, and income of district
18 attorneys and assistant district attorneys.
- 19 (16) Sentencing outcomes in cases that are resolved either by
20 plea-bargaining or trial.
- 21 (17) Sentencing recommendations made by prosecutors.
- 22 (18) Bail amounts that prosecutors request in each case and the bail amount
23 actually set.
- 24 (19) Number of public records act requests received during the year and how
25 district attorneys office responded.
- 26 (20) Any cases that were overturned on appeal or in post-conviction
27 proceedings and grounds for such reversals.
- 28 (21) Appendices with all of the underlying case information.

1 D. The annual report for the previous calendar year shall be presented to the
2 commission on or before the first day of April in each year. The commission will
3 then provide a copy of the report to the governor, Senate, House of Representatives,
4 and Louisiana Supreme Court, then publish the report to the public.

5 E. The commission has oversight with compliance of the provisions of this
6 Section and shall implement sanctions for parish district attorney offices that fail to
7 produce such an annual report.

8 §6011. Effect

9 A. Removal or retirement of a prosecutor pursuant to this Chapter shall be
10 considered a removal from office.

11 B. If any part or provision of this act is adjudged by a court of competent
12 jurisdiction to be unconstitutional or otherwise invalid, such judgment shall not
13 affect or impair any other part or provision of this act, but shall be confined in its
14 operation to such part or provision.

15 Section 2. The provisions of this Act shall become effective January 1, 2019.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 709 Original

2018 Regular Session

Marcelle

Abstract: Establishes the State Commission on Prosecutorial Conduct and the Code of Prosecutorial Conduct.

Proposed law establishes the State Commission on Prosecutorial Conduct. Proposed law provides that the commission shall be composed 11 individuals including one court of appeal judge, two district court judges, three licensed attorneys, and five citizens that cannot be attorneys, judges, or elected officials. Each commission member shall serve a non-renewable term of four years. The commission shall convene at least once per quarter.

Proposed law requires the commission to review the conduct of the prosecutors upon the filing of a complaint with the commission, to determine whether the conduct violates certain present or proposed laws, case law, or rules of professional conduct.

Proposed law upon the recommendation of the commission, the Louisiana House of Representatives may institute the impeachment process. The Louisiana House of Representatives may disqualify a prosecutor from exercising any prosecutorial function. The impeachment shall be by the House and a trial by the Senate. The Senate may try an impeachment whether or not the House is in session.

Proposed law establishes duties of the commission. The commission is required to conduct hearings and investigations. The commission also has the ability to request and receive supporting documentation from courts, departments, state agencies, and boards. The commission is required to report annually to the governor, the House of Representatives, the Senate, and the chief justice of the Louisiana Supreme Court.

Proposed law grants the commission the ability to employ a chief executive officer and at least one special counsel.

Proposed law requires that complaints made to the commission must be submitted in writing, or reduced to writing, state the misconduct or incapacity complained of, and be signed by the complainant. Judges are required to report instances of prosecutorial misconduct observed in their courtroom. Prosecutors have the ability to self-report potential misconduct. Authorizes the commission to consider alleged misconduct or incapacity of a prosecutor from any source, including anonymous complaints and news reports.

Proposed law states that all complaints should be directed to the chief executive office of the commission or to special counsel. Any member of the commission has the ability to receive a complaint or bring any matter to the attention of the commission on his own motion. Special counsel must maintain a docket of all complaints and screen out complaints that are deemed unfounded, frivolous, conclusory, or contradictory.

Proposed law requires the commission to respond to all complaints in writing; however, there is no requirement to respond to repetitive or abusive complaints.

Proposed law requires special counsel to send a copy of the complaint to respondent prosecutor. The commission may cause the investigation to be handled in any manner it deems proper. The respondent prosecutor will have the ability to respond to complaint. Provides for procedures to be sed to implement proposed law.

Proposed law requires the chair to preside over all proceedings.

Proposed law provides that the commission is not bound by the present law rules of evidence and may admit material and relevant evidence, including hearsay.

Proposed law allows the Louisiana Supreme Court to designate sitting, former, or retired judges to serve as hearing officers to hear and report to the commission.

Proposed law requires each commission member and the chair to vote on each issue submitted to the commission. Proposed law prohibits voting by proxy by any commission member.

Proposed law requires confidentiality throughout the entire complaint process, and provides some exceptions to the general rule of confidentiality.

Proposed law requires the creation of the Code of Prosecutorial Conduct governing the following:

- (1) Functions of the prosecutor
- (2) Conflicts of interest
- (3) Public statements
- (4) Duty to respond to misconduct
- (5) Relations with police
- (6) Relations with the courts and bar
- (7) Prompt disposition of criminal charges
- (8) Literary or media agreements
- (9) Investigative function of prosecutor
- (10) Relations with victims and prospective witnesses

- (11) Relations with expert witnesses
- (12) Decision to charge
- (13) Relations with grand jury
- (14) Quality and scope of evidence before grand jury
- (15) Discretion in the charging decision
- (16) Role in first appearance and preliminary hearing
- (17) Disclosure of evidence by the prosecutor
- (18) Availability for plea discussions
- (19) Fulfillment of plea discussions
- (20) Calendar control
- (21) Courtroom professionalism
- (22) Selection of jurors
- (23) Relations with jury
- (24) Opening statement
- (25) Presentation of evidence
- (26) Examination of witnesses
- (27) Argument to the jury
- (28) Facts outside the record
- (29) Comments by prosecutor after verdict
- (30) Role in sentencing
- (31) Information relevant in sentencing

Proposed law provides for the commission to be responsible for the overseeing of district attorney-operated diversion programs statewide. The commission will have the ability to collect data related to individuals placed in district attorney-operated diversion programs directly from the district attorney's office in the applicable parish. The commission is responsible for annually publically reporting the accumulated data and conclusion reached.

Proposed law allows the commission to require every parish district attorney's office to develop a performance accountability program to provide for regular reporting to the citizens of this state. The accountability program requires the parish district attorney's office to institute yearly ethics training for all prosecutors. An annual report shall be generated and presented to the commission on or before April 1st of each year. The commission will provide a copy of the report to the governor, Senate, House of Representatives, and the La. Supreme Court. The report should then be published to the public.

Effective Jan. 1, 2019.

(Adds R.S. 13:5986-6011)