

2023 Regular Session

SENATE BILL NO. 40

BY SENATOR FOIL

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

ETHICS. Allows the use of summary proceedings in matters pending before the Ethics Adjudicatory Board. (8/1/23)

1 AN ACT

2 To enact R.S. 42:1141.7 and 1141.8, relative to motions and exceptions; to provide for a

3 motion for summary judgment for matters pending before the Ethics Adjudicatory

4 Board; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 42:1141.7 and 1141.8 are hereby enacted to read as follows:

7 **§1141.7. Motions and exceptions**

8 **A. Motions and exceptions may be made before, during, or after a public**

9 **hearing.**

10 **B. Any motion or exception made before or after the public hearing shall**

11 **be filed with the appropriate panel of the Ethics Adjudicatory Board. Any**

12 **contradictory motion or exception shall be accompanied by a memorandum**

13 **which shall set forth a concise statement of the grounds upon which the relief**

14 **sought is based and the legal authority therefor.**

15 **§1141.8. Summary judgment**

16 **A. A motion for summary judgment may be filed by the Board of Ethics**

17 **or the respondent without leave of the Ethics Adjudicatory Board and without**

1 an agreement by any other party to the use of summary judgment procedure,
2 at any time before, during, or after a public hearing on the merits.

3 B. After an opportunity for adequate discovery, a motion for summary
4 judgment shall be granted if the motion, memorandum, and supporting
5 documents show that there is no genuine issue as to a material fact and that the
6 mover is entitled to judgment as a matter of law.

7 C. The documents listed in Code of Civil Procedure Art. 966 and
8 documents obtained by the Board of Ethics during the course of an investigation
9 as provided for in R.S. 42:1141.4(B) may be filed in support of or in opposition
10 to the motion.

11 D. The Ethics Adjudicatory Board may exclude incompetent, irrelevant,
12 immaterial, or unduly repetitious evidence.

13 E. An objection to an evidentiary offer may be made and shall be noted
14 in the record. When an objection to an evidentiary offer is sustained by the
15 Ethics Adjudicatory Board, the subject evidence shall be considered proffered
16 into the record with or without a motion.

17 F.(1) The burden of proof rests with the mover. Nevertheless, if the
18 mover will not bear the burden of proof at the public hearing on the merits of
19 the issue before the Ethics Adjudicatory Board on the motion for summary
20 judgment, the mover's burden on the motion does not require him to negate all
21 essential elements of the adverse party's claim, action, or defense, but rather to
22 point out to the board the absence of factual support for one or more elements
23 essential to the adverse party's claim, action, or defense.

24 (2) The burden is on the adverse party to produce factual support
25 sufficient to establish the existence of a genuine issue of material fact or that the
26 mover is not entitled to judgment as a matter of law.

27 G. The Ethics Adjudicatory Board may render a summary judgment
28 dispositive of a particular issue or defense in favor of one or more parties even
29 though the granting of the summary judgment does not dispose of the entire

1 case as to that party or parties.

2 H. The Ethics Adjudicatory Board may render or affirm a summary
 3 judgment only as to those issues set forth in the motion under consideration by
 4 the board at that time.

5 I. Notice of the hearing on the motion for summary judgment shall be
 6 transmitted to the Board of Ethics through the secured electronic file transfer
 7 system and to the respondent through his counsel of record, or if no counsel of
 8 record, to the respondent, by either email or regular mail to the last known
 9 email or mailing address provided by the respondent's counsel of record or
 10 respondent to the Ethics Adjudicatory Board.

11 J. The denial of a motion for summary judgment by the Ethics
 12 Adjudicatory Board is an interlocutory judgment and is not appealable
 13 pursuant to R.S. 42:1142(A).

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Matt DeVille.

DIGEST

SB 40 Reengrossed

2023 Regular Session

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Proposed law authorizes the use of motions and exceptions by any party in matters before the Ethics Adjudicatory Board. Provides procedure for the use of a motion for summary judgment.

Proposed law authorizes a motion for summary judgment to be filed by the Board of Ethics or the respondent without leave of the Ethics Adjudicatory Board and without an agreement by any other party to the use of summary judgment procedure, at any time before, during, or after a public hearing on the merits.

Proposed law provides that after a period of adequate discovery, a motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to a material fact and that the mover is entitled to judgment as a matter of law.

Proposed law provides that the documents listed in Code of Civil Procedure Art. 966, and documents obtained by the Board of Ethics during the course of an investigation may be filed in support of or in opposition to a motion for summary judgment.

Proposed law provides that the burden of proof is on the mover and further provides the burden is on the adverse party to produce factual support sufficient to establish the existence of a genuine issue of material fact or that the mover is not entitled to judgment as a matter of law.

Proposed law provides that the Ethics Adjudicatory Board may render summary judgment dispositive of a particular issue or defense in favor of one or more parties even though the

granting of the summary judgment does not dispose of the entire case as to that party or parties. Further provides that the Ethics Adjudicatory Board may render or affirm summary judgment only as to those issues set forth in the motion under consideration by the board at that time.

Proposed law provides that notice of the hearing on the motion for summary judgment shall be transmitted to the Board of Ethics through the secured electronic file transfer system and to the respondent through his counsel of record, or if no counsel of record, to the respondent, by either email or regular mail to the last known email or mailing address provided by the respondent's counsel of record or respondent to the Ethics Adjudicatory Board.

Proposed law provides that a denial of a motion for summary judgment is an interlocutory judgment and is not appealable pursuant to present law.

Effective August 1, 2023.

(Adds R.S. 42:1141.7 and 1141.8)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Senate and Governmental Affairs to the original bill

1. Remove the Board of Ethics' investigative file, all records and documents in the possession of the Board of Ethics, and any other documents that have probative value commonly accepted by reasonably prudent people in the conduct of their affairs from the list of documents that may be filed in support of or in opposition to the motion for summary judgment.
2. Add certified medical records to the list of documents that may be filed in support of or in opposition to the motion for summary judgment.

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

1. Provide that documents listed in Code of Civil Procedure Art. 966 and documents obtained by the Board of Ethics during the course of an investigation may be filed in support of or in opposition to the motion for summary judgment.