



STATE BAR OF WISCONSIN
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September 11, 2019

Sent Via Electronic Mail and Regular Mail

Clerk of Supreme Court
Attention: Deputy Clerk-Rules
P.O. Box 1688
Madison, WI 53701-1688
clerk@wicourts.gov

RE: Written Comments Regarding Rule Petition 19-08 of the OLR Process Review
Committee

Dear Clerk of Supreme Court:

We are writing on behalf of the Board of Governors of the State Bar of Wisconsin to provide comments regarding Rule Petition 19-08 submitted by the OLR Process Review Committee and the Subcommittee on Process. For the most part, the State Bar Board of Governors supports the recommendations contained in this Rule Petition except as it relates to the proposal for elimination of the District Committee step as part of the process for review of grievances.

Petition Sections 1 and 3

These Sections of the Rule Petition provide for the elimination of the District Committees. The Board of Governors of the State Bar of Wisconsin opposes these proposed changes to SCR 21.01(1)(b) and SCR 21.06.

The Board of Governors believes that the District Committees provide a process by which a grievance against an attorney is viewed by other attorneys and citizens from the area where the attorney resides and provides the only opportunity for other local attorneys to provide input into the nature and import of the grievance filed against a particular attorney. It is also the only opportunity for local factors to be considered including local practice and appropriate expectations from clients in the area where the attorney is located.

The elimination of the use of District Committees by the Office of Lawyer Regulation (“OLR”) creates an inappropriate scenario of all grievances being reviewed and considered by staff at OLR without consideration of or acknowledgement of local procedures and local expectations regarding the representation being provided by the attorney who is the subject of the grievance. The proposal, in effect, centralizes all attorney discipline matters around the standards of expectation identified by OLR Investigative Staff without recognition of the local environment and the expectations that are reasonable and appropriate based upon the location and the community in which the attorney is located.

The Board of Governors believes that the District Committees provide reasonable and appropriate alternatives for investigation of matters particularly relating to the conduct of attorneys in a particular community.

Petition Sections 4 and 5

These Sections of the Rule Petition relate to the use of a consensual reprimand to resolve a matter that is presented to OLR for consideration. The Rule would allow the OLR Director to pursue a consensual reprimand instead of the processing of a grievance through the normal investigative process. The Board of Governors supports this change to the Rule in order to allow for the use of a consensual reprimand to resolve a matter pending before OLR.

Petition Section 6

This Section of the Rule Petition proposes to re-create SCR 22.03(4) of the existing Rule in order to establish a procedure for the OLR Director to proceed with an automatic suspension of a respondent attorney's license to practice law if the respondent fails to promptly cooperate with an investigation commenced by OLR. The Rule change would also reduce the interval of 140 days to 40 days for a potential sanction for failure to cooperate with an investigation. The shortening of this interval of time to respond is intended to induce a respondent attorney to cooperate with an investigation. Further, the Rule change would require the respondent attorney show rationale for the lack of cooperation with OLR instead of placing the burden on OLR to show the failure to cooperate. The changes also allow for an automatic reinstatement of a license if a respondent attorney engages in proper cooperation even after the automatic suspension has occurred.

The Board of Governors of the State Bar has concerns regarding the 40-day limitation but recognizes that the goal of these proposed changes is to encourage cooperation by the respondent attorney when an investigation is being conducted by OLR. The Board of Governors support the effort to encourage cooperation by the respondent attorney but would suggest that the 40-day time limit be increased by an appropriate amount (90 days) to ensure the opportunity for the respondent attorney to properly respond to an investigation being conducted by OLR.

Petition Sections 2, 7, 8, and 9

These Sections of the Rule Petition relate to special investigators and the role of a special investigator in conducting an investigation of a complaint against a participant in the attorney discipline process. These changes provide an administrative process for the investigation of these complaints against individuals who are considered part of the attorney discipline process. The steps being proposed appear to be consistent with other steps that are required for investigation of potential misconduct involving a attorney. The Board of Governors supports these changes as being consistent with the investigation process for other attorneys.

Petition Section 10

This Section of the Rule Petition provides for the insertion of a comment which would establish a procedure for disclosure of a suspension when a attorney is administratively suspended from the practice of law. This Rule change would be consistent with the current Rules as it relates to a suspension of a attorney's license. The Board of Governors supports these changes because they are consistent with the process used for the suspension of an attorney through the entire discipline process.

CONCLUSION

The Board of Governors does not support the elimination of the District Committees from the OLR discipline process. The Board believes that the use of District Committees can be improved by OLR establishing more specific guidelines for the procedures and timeline to be met by the District Committee; however, the Board also believes that the use of local attorneys and citizens provide a procedure for assessing the conduct of an attorney based upon the local community and local environment. As a result, the Board of Governors does not agree with the proposed elimination of the District Committees.

The Board of Governors generally agrees with the other provisions of the Rule Petition with the comments as notes above.

I want to thank you for the opportunity to comment regarding Rule Petition 19-09. I would appreciate the opportunity to present this information to the Court on the date of the Hearing.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Dean R. Dietrich". The signature is written in a cursive style with a large initial "D" and "R".

Dean R. Dietrich
State Bar of Wisconsin
Board of Governors