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In the Matter of  
the Petition for Amendment  
of Various Rules in Chapter SCR 20

Petition for Rulemaking 10-09  
AMENDED PETITION

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TO: Chief Justice Shirley S. Abrahamson  
Justice Ann Walsh Bradley  
Justice N. Patrick Crooks  
Justice David T. Prosser, Jr.  
Justice Patience D. Roggensack  
Justice Annette Kingsland Ziegler  
Justice Michael J. Gableman

Filed with the Clerk of the Supreme Court  
110 E. Main Street, Suite 215  
Madison, WI 53701-1688

The Petitioner, John Nicholas Schweitzer, attorney, hereby files this amendment to the petition originally filed on October 21, 2010, and now designated Petition for Rule-making 10-09. Following its filing, the petition was reviewed by Dean Dietrich, the chair of the State Bar's Professional Ethics Committee; Tim Pierce, the State Bar's Ethics Counsel; attorneys Elizabeth Estes and Cathe Hahn of the Office of Lawyer Regulation; the State Bar's Family Law Section; and the Board of Administrative Oversight, and as a result of that review objections or concerns were raised to almost all of the original 17 proposed amendments and to 2 more that were proposed along the way.

All proposed amendments to which any objection or concern was raised have been removed from this Amended Petition, which therefore presents to the Supreme Court only the 2 proposed amendments to which no objection or concern was raised by any of the reviewers. The

director of OLR recommended that the petition be withdrawn as he sees no advantage to either of the remaining two requested changes, but he has no objection to them.

The Petitioner therefore asks the Supreme Court of Wisconsin for an order that amends Rules SCR 4.1 and SCR 8.4 in Chapter SCR 20 as described below.

PROPOSED AMENDMENT 1

**SCR 20:4.1 Truthfulness in statements to others**

...

(b) Notwithstanding par. (a), SCR 20:5.3(c)(1), and SCR 20:8.4, a lawyer may advise or supervise others with respect to lawful investigative activities. Lawful investigative activity may involve a lawyer as an advisor or supervisor only when the lawyer in good faith believes there is a reasonable possibility that unlawful activity has taken place, is taking place or will take place in the foreseeable future.

WISCONSIN COMMITTEE COMMENT

Paragraph (b) has no counterpart in the Model Rule. As a general matter, a lawyer may advise a client concerning whether proposed conduct is lawful. See SCR 20:1.2(d). This is allowed even in circumstances in which the conduct involves some form of deception, for example the use of testers to investigate unlawful discrimination or the use of undercover detectives to investigate theft in the workplace. When the lawyer personally participates in the deception, however, serious questions arise. See SCR 20:8.4(c). Paragraph (b) recognizes that, where the law expressly permits it, lawyers may have limited involvement in certain investigative activities involving deception.

~~Lawful investigative activity may involve a lawyer as an advisor or supervisor only when the lawyer in good faith believes there is a reasonable possibility that unlawful activity has taken place, is taking place or will take place in the foreseeable future.~~

JUSTIFICATION

Moving the language from the comment to the rule will help clarify the situations in which an attorney may engage in "lawful investigative activity".

PROPOSED AMENDMENT 2

**SCR 20:8.4 Misconduct**

WISCONSIN COMMENT

In addition to the obligations in this rule, Wisconsin attorneys should note the obligation in SCR 21.15 (5) to notify the Office of Lawyer Regulation and the Supreme Court if convicted of a crime and the obligation in SCR 22.22 (1) to notify the Director of the Office of Lawyer Regulation of public discipline for misconduct or a license suspension for medical incapacity imposed in another jurisdiction.

JUSTIFICATION

The proposed comment would not create a new obligation but it would serve to inform Wisconsin attorneys of existing reporting obligations in other chapters of the Supreme Court Rules.

Respectfully submitted this 23rd day of April, 2013.

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John Nicholas Schweitzer, Attorney  
State Bar No. 1008693