

SUPPORTING MEMORANDUM In the Matter
Of the Petition to Create Supreme
Court Rule 22.21m Relating to Public
Notice of Formal Investigations in
The Public Interest

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 Court Diane Fremgen
Clerk of Supreme Court
110 E. Main Street
Suite 215
Madison, WI 53703

The Board of Administrative Oversight (BAO) and Office of Lawyer Regulation (OLR) provide the following memorandum in support of the petition to create Supreme Court Rule (SCR) 22.21m to establish standards and procedures for providing notice of formal investigations of attorney misconduct and medical incapacity when required to protect the public.

In 2011, a study of the lawyer regulation system was conducted. The report of the study committee, dated February 2012, found:

One of the complaints that has been raised regarding the OLR process is the fact that an ethics complaint can remain confidential for a substantial period of time before it is disclosed to the public. Public disclosure is a sensitive issue that requires a balance between the right of the public to know promptly of lawyer misconduct and the right of an attorney who is the subject of a complaint to protection from public disclosure of complaints that may have no merit. There were a number of individuals involved in the process who expressed concern that disclosure of complaints at the time they are filed by complainants would be detrimental. The concern is that disclosure upon filing could subject an attorney to the adverse consequences resulting from public disclosure of a complaint before any determination is made regarding the merits of the complaint. On the other hand, a lengthy period of confidentiality prior to disclosure of complaints that do have merit could result in further harm to the public by an attorney who may be engaging in a pattern of misconduct.

Petitioners propose creating SCR 22.21m in response to these findings. The proposed rule provides substantive standards that balance the interests of the attorney and the public. These standards provide for public notice in the situations where the potential harm to the public is most significant. The proposed rule also provides procedural protections to ensure judicious balancing of the interests of the attorney and the public. Public notice would issue only for good cause, and only after due process and consideration by the Supreme Court.

For these reasons, petitioners recommend the creation of SCR 22.21m as provided in Appendix A.

Petitioners do not believe there are any related petitions pending before the Court.

Respectfully submitted this ___ day of _____, 2013.

Rod W. Rogahn
Chairperson
Board of Administrative
Oversight
State Bar No. 1028404

Keith L. Sellen
Director
Office of Lawyer Regulation
State Bar No. 1001088