

Dean R. Dietrich.
Shane J. VanderWaal
Lee D. Turonie
Alyson D. Dieckman

Of Counsel
Arthur M. Scheller, III



Dietrich VanderWaal, S.C.
530 Jackson Street
P.O. Box 1343
Wausau, WI 54402-1343
Phone: 715-845-9401
Fax: 715-848-0243
dietrich@dvlawgroup.com
www.dietrichvanderwaal.com

July 26, 2019

Sent Via Electronic Mail

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

RE: Comments Regarding Petition 19-07 Submitted by OLR Process Review
Committee

Dear Clerk of Supreme Court:

I am writing in my personal capacity with comments regarding Petition 19-07 which has been filed by the Supreme Court OLR Process Review Committee.

This Petition proposes a number of changes to the Supreme Court Rules as it relates to the OLR Charging Process. Two areas of particular concern are (1) the Rule change that requires an attorney to notify his/her employer law firm or supervising lawyer that a grievance has been filed against him/her and an investigation has been commenced and (2) the Rule change that provides that certain information from the Preliminary Review Committee review process would be considered public information even though a final charging decision has not been made by the OLR Director.

I write separately on each of these items and also ask the opportunity to speak to the Court at the hearing on September 16, 2019, regarding this Petition.

Section 6 of Petition 19-07

Section 6 creates Supreme Court Rule 22.03(2g) and (2r) which provide that a lawyer must notify his/her employer, former employer or supervising attorney of the fact that an investigation has commenced over a grievance that has been filed against him/her with the Office of Lawyer Regulation. The proposed Rule change goes further and suggests that the OLR Director may, in certain instances, notify the law firm/employer directly of the commencement of an investigation over a grievance.

The Board of Governors of the State of Wisconsin has opposed this portion of Petition 19-07. I write in support of the position taken by the State Bar Board of Governors. As an attorney representing attorneys before the Office of Lawyer Regulation in disciplinary proceedings, I am very surprised that this proposed Rule would be sent forward for consideration by the Court. My major concern relates to the requirement of notifying the employer or supervising attorney about the filing of a grievance without any consideration of whether any type of investigation will

actually find any basis for the grievance to proceed. I ask the Court to consider the damaging effect that could occur if a law firm is notified or is given information suggesting that a grievance has been filed and an investigation has been commenced against a member of the firm when there is no proof of the merit to the grievance and certainly no effort undertaken to investigate the validity and viability of the grievance. The potential damage to the employment status and reputation of the lawyer involved can be immense.

I have had the opportunity to represent law firms who have been notified (typically through rumors) that a grievance has been filed against an associate in the law firm. These management lawyers in the law firm are asking information about the procedure to be followed and the facts and circumstances relating to the grievance in order to assess whether the law firm itself needs to take any action as a result of the grievance being filed or investigated. I counsel the law firm that the mere filing of a grievance does not warrant the taking of action against an attorney in the law firm absent some very unusual circumstances where it may be suggested that the lawyer has engaged in theft of client property. The vast majority of grievances do not rise to that level and placing the lawyer in the unenviable position of having to defend him/herself before his/her employing law firm when there is very little information available regarding the nature and scope of the grievance can be very damaging to the reputation and the well-being of the lawyer.

The Court should not approve this proposed revision to the Rules. It may be valuable for the Office of Lawyer Regulation and the State Bar of Wisconsin to provide further education to lawyers and law firms regarding the best steps to be taken when a grievance is filed or investigated and allow law firms to establish employment policies that would relate to those situations.

Section 14 of Petition 19-07

Section 14 of the Petition creates new Supreme Court rules 22.40(1g) and (1m). These provisions authorize the release of certain information resulting from a decision by the Preliminary Review Committee to proceed with a proposed complaint against an attorney. This information currently is kept confidential and forms the basis for the filing of a complaint with the Court. The Complaint that is ultimately filed with the Court may or may not include all of the possible charges that were reviewed and addressed by the Preliminary Review Committee. Allowing the decision of the Preliminary Review Committee (with certain information protected) to become a public document virtually eliminates any further review by the OLR Director to determine which Counts/Charges to pursue and further eliminates any opportunity for discussions with the respondent attorney over possible stipulations of facts or stipulations of conduct. Simply stated, once the information is made public, the respondent attorney will likely be obligated to respond and challenge all aspects of the recommended charges from the OLR investigation with little or no opportunity for discussion as to the nature and scope of a complaint and possible stipulations between OLR and the respondent attorney. This occurs because quite often the public information about charges against a lawyer are publicized in various legal newspapers and on media sites.

This Court has authorized other Rule changes which vested more discretion in the OLR Director to determine which matters should be brought for a formal complaint before the Court. The strong potential, if the Court adopts this Rule change, is that the OLR Director will be extremely limited in the ability to exercise that discretion once a matter has become part of a public record and known to members of the public.

As respondent's counsel, I am often faced with a challenge when the facts of a complaint have become known to the public and become obligated to establish a defense for all elements or counts

of the complaint because of the statements made in the media addressing the allegations that may initially be brought against an attorney. By allowing the information from the Preliminary Review Committee decision (where the respondent attorney has had no opportunity to appear before the Preliminary Review Committee) to become public creates a significant deterrent to efforts to streamline and expedite the hearing process once the public record has been created identifying the various counts charged against the respondent attorney.

Once a complaint has been filed with the Court, the information regarding the conduct of the attorney and the alleged Rule violations becomes very public and open to reporting from the news media. This again is a challenging situation because the respondent attorney has not had an opportunity to file a response/answer to the complaint when the media coverage is publicized. The respondent attorney is in a difficult position at this time and a procedure that would eliminate any final review by the OLR Director and allow for media coverage of facts and charges that may not ultimately be filed places the respondent lawyer in an even more challenging situation. The Court should not approve this change in the charging procedures.

CONCLUSION

Based upon these considerations, I respectfully request that the Supreme Court deny the creation of new Rules identified in Section 6 and Section 14 of Petition 19-07. I do not believe that these proposed changes are in the best interests of the Supreme Court, the Office of Lawyer Regulation, or the respondent attorneys. I believe these proposed changes will negatively affect the process and procedure used for the charging of complaints against a lawyer.

Respectfully submitted,

A handwritten signature in cursive script that reads "Dean R. Dietrich". The signature is written in black ink and is positioned below the typed name.

Dean R. Dietrich