

SCR CHAPTER 21

LAWYER REGULATION SYSTEM

PREAMBLE

The lawyer regulation system is established to carry out the supreme court's constitutional responsibility to supervise the practice of law and protect the public from misconduct by persons practicing law in Wisconsin.

SCR 21.001 Definitions.

The terms used in this chapter have the meaning set forth in SCR 22.001.

SCR 21.01 Components.

- (1) The lawyer regulation system consists of the following:
 - (a) Office of lawyer regulation, provided in SCR 21.02.
 - (b) Special investigators and the special preliminary review panel, provided in SCR 22.25.
 - (c) Preliminary review committee, provided in SCR 21.07.
 - (d) Referees, provided in SCR 21.08.
 - (e) Board of administrative oversight, provided in SCR 21.10.
 - (f) Supreme court.

SCR 21.02 Office of lawyer regulation.

(1) The office of lawyer regulation consists of the director, investigative and support staff, and staff counsel and retained counsel. The office receives and responds to inquiries and grievances relating to attorneys licensed to practice law or practicing law in Wisconsin and, when appropriate, investigates allegations of attorney misconduct or medical incapacity, and may divert a matter to an alternatives to discipline program. The office is responsible for the prosecution of disciplinary proceedings alleging attorney misconduct and proceedings alleging attorney medical incapacity and the investigation of license reinstatement petitions. The office has discretion whether to investigate and to prosecute de minimis violations. Discretion permits the office to prioritize resources on matters where there is harm and to complete them more promptly.

(2) The office of lawyer regulation functions pursuant to the procedures set forth in SCR chapter 22.

SCR 21.03 Office of lawyer regulation - director.

(1) The director of the office of lawyer regulation is appointed by and serves at the pleasure of the supreme court.

(2) The director shall be admitted to the practice of law in Wisconsin no later than six months following appointment.

(3) The director is an employee of the supreme court under the supreme court's ultimate personnel authority and subject to personnel policies and procedures administered by the director of state courts.

(4) The performance of the director shall be formally evaluated every two years by the director of state courts, who shall consult with the staff of the office of lawyer regulation, the preliminary review committee, the board of administrative oversight, and attorneys who represent respondents in proceedings brought by the director. The director of state courts shall report the evaluation to the supreme court as a personnel matter.

(5) The director may not engage in the private practice of law.

(6) The duties of the director are:

(a) To investigate any possible misconduct or medical incapacity of an attorney licensed to practice law or practicing law in Wisconsin.

(b) To receive, review and direct the investigation of allegations of attorney misconduct or medical incapacity.

(c) To close an inquiry or grievance following preliminary evaluation and to dismiss a grievance following investigation when there is insufficient evidence of cause to proceed.

(d) To present as the director may consider appropriate the results of an investigation to the preliminary review committee for a determination of cause to proceed in the matter.

(e) To file with the supreme court and prosecute complaints alleging attorney misconduct and petitions alleging attorney medical incapacity after a preliminary review panel has determined there is cause to proceed in the matter.

(f) To divert a matter to an alternatives to discipline program as the director may consider appropriate and to monitor the attorney's participation in the program.

(g) To monitor an attorney's compliance with conditions imposed on the attorney's practice of law.

(h) To investigate petitions for license reinstatement and, at the

request of the board of bar examiners, to investigate the character and fitness of an applicant for bar admission.

(j) To employ, with the approval of the director of state courts, staff to assist in the performance of the director's duties.

(k) **Repealed.**

(m) To prepare annually a budget for the operation of the office of lawyer regulation and to submit it to the board of administrative oversight for review and presentation, with comment, to the supreme court.

(n) To prepare annually a report of the activities of the office of lawyer regulation during the preceding year and to submit it to the board of administrative oversight for review and presentation, with comment, to the supreme court.

(o) To delegate the duties specified in this rule to staff as the director may consider advisable.

(p) To perform other duties as may be assigned by the supreme court.

(7) **Repealed.**

(8) The director may refer a matter involving a fee dispute to a state or local bar association's fee arbitration committee for resolution.

(9) The director, with notice to the lawyer concerned, may refer a lawyer to a state bar lawyer assistance program for any of the following reasons:

(a) The lawyer has agreed to enter an alternative to discipline program and the director determines that a state bar lawyer assistance program would be the appropriate entity to monitor conditions.

(b) The lawyer is subject to conditions on the continued practice of law or conditions on seeking license reinstatement and the director determines a state bar lawyer assistance program would be the appropriate entity to monitor conditions.

(c) The lawyer has pleaded impairment or medical incapacity in response to an investigation or a complaint.

(d) The lawyer has exhibited or engaged in other behavior that provides a reasonable belief that the lawyer may be impaired or incapacitated.

SCR 21.04 Office of lawyer regulation - staff.

Staff of the office of lawyer regulation are permanent supreme court employees supervised by the director and over whom the

director of state courts has ultimate personnel authority. Staff are subject to personnel policies and procedures administered by the director of state courts. Work assignments to staff are made in accordance with the chain of command established by pertinent job descriptions. Annual performance evaluations of staff are conducted by immediate supervisors in the manner prescribed by the director of state courts.

SCR 21.05 Office of lawyer regulation - counsel.

(1) Staff of the office of lawyer regulation may include persons admitted to the practice of law in Wisconsin whose duties are to conduct or assist in investigations, present matters to the preliminary review panels, prosecute complaints alleging attorney misconduct and petitions alleging attorney medical incapacity, conduct or assist in reinstatement investigations and represent the office of lawyer regulation in hearings, and perform other duties assigned by the director.

(2) The director may retain attorneys engaged in the practice of law in Wisconsin to assist in the performance of the director's duty to present matters to the preliminary review panels, to prosecute complaints alleging attorney misconduct and petitions alleging attorney medical incapacity, and to conduct or assist in reinstatement investigations and represent the office of lawyer regulation in hearings, and perform other duties assigned by the director. Retained counsel are independent contractors and serve at the pleasure of the director.

SCR 21.06 District committees. Repealed.

SCR 21.07 Preliminary review committee.

(1) The 14-member preliminary review committee consists of 9 lawyers and 5 public members appointed by the supreme court. Members serve staggered 3-year terms. A member may serve not more than 2 consecutive 3-year terms.

(2) The preliminary review committee, having a quorum of 8 members, is comprised of 2 7-member panels, each having at least 4 lawyers and 2 public members and a quorum of 4 members. The chairperson of the preliminary review committee shall designate the members of each panel and shall devise and implement a rotation system by which each member of the committee serves on each panel during each 3-year period.

(3) The duties of the preliminary review panels are:

(a) To review the results of investigations of allegations of attorney misconduct or medical incapacity presented by the director and to determine whether there is cause for the director to proceed in the matter. The affirmative vote of four or more members of a panel is required to determine cause to proceed in a matter.

(b) To review at the request of a grievant the director's closing of a matter prior to investigation under SCR 22.02(6)(a) and dismissal of a grievance following investigation under SCR 22.05(1)(a).

(c) To confer periodically with the board of administrative oversight about the operation of the preliminary review committee and panels and suggest improvements in their operation.

(4) The preliminary review committee shall hold regularly scheduled meetings at least quarterly. At the first meeting of each calendar year, the preliminary review committee shall elect a chairperson and a vice-chairperson to act in the absence of the chairperson.

(5) Each panel shall meet as needed and shall report its determinations to the chairperson of the preliminary review committee.

(6) The portions of the meetings of the preliminary review committee and of the panels relating to specific disciplinary matters are closed. The portions of the meetings relating to other matters are open.

(7) The preliminary review committee and the panels shall take and retain full and complete minutes of the open and closed sessions of their meetings. The minutes of the open sessions are available to the public.

(8) The preliminary review panels shall function pursuant to the procedures set forth in SCR chapter 22.

(9) Members of the preliminary review committee are entitled to reimbursement for expenses incurred in connection with membership on the committee.

SCR 21.08 Referees.

(1) The referee panel consists of no more than 15 lawyers and reserve judges appointed by the supreme court. Referees shall be members of the State Bar of Wisconsin in good standing. Referees serve staggered four-year terms. A referee may be reappointed to serve

consecutive terms. If a referee's term ends while an assigned matter remains pending, the referee may oversee completion of the matter unless, on its own motion or on motion of the parties, the supreme court directs the appointment of a new referee.

(2) Referees function under the supervision of the supreme court.

(3) The duties of a referee are:

(a) To preside over and conduct hearings on complaints of attorney misconduct, on petitions alleging attorney medical incapacity, and on petitions for license reinstatement, and to issue orders necessary to advance the proceeding.

(b) To make written findings, conclusions, and recommendations, and to submit them to the supreme court for review and appropriate action.

(c) To review consensual discipline under SCR 22.09.

(d) To conduct hearings, make written findings, conclusions, and recommendations on other matters as the supreme court may direct.

(4) Referees shall function pursuant to the procedures set forth in SCR chapter 22.

(5) Each referee shall participate in mandatory referee training developed by the office of judicial education, as follows:

(a) Each newly appointed referee shall attend the earliest one-half day new referee orientation seminar offered following his or her appointment, unless a period of extension is granted by the office of judicial education, upon prior application by the referee. A referee reappointed to serve a consecutive term need not repeat the new referee orientation seminar.

(b) Each referee shall attend a one-half day referee training seminar every two years during the referee's four-year term when offered by the office of judicial education.

(c) If a referee fails to comply with the mandatory referee training, the office of judicial education shall advise the supreme court and the supreme court may, following notice to the referee, remove the referee from the referee panel provided in SCR 21.08.

SCR 21.09 Supreme court.

(1) The supreme court determines attorney misconduct and medical incapacity and imposes discipline or directs other action in attorney misconduct and medical incapacity proceedings filed with the court.

(2) The supreme court shall meet with the director, with the preliminary review committee, and with the board of administrative oversight annually to discuss the operation of the lawyer regulation system and consider improvements in its operation.

SCR 21.10 Board of administrative oversight.

(1) The 12-member board of administrative oversight of the lawyer regulation system consists of 8 lawyers and 4 public members appointed by the supreme court. Members serve staggered three-year terms. A member may serve not more than two consecutive three-year terms.

(2) The duties of the board of administrative oversight are:

(a) To monitor the fairness, productivity, effectiveness, and efficiency of the attorney regulation system, including intake, the time required for disposition of an allegation of attorney misconduct or medical incapacity, the presence of a quorum at meetings of the preliminary review panels and the frequency of divided votes determining cause to proceed, variations in specific matters among the discipline sought by the director, the discipline recommended by the referee, and the discipline imposed by the supreme court.

(b) To monitor implementation of new procedures in the lawyer regulation system.

(c) To assess the public's and the bar's perception of the integrity of the lawyer regulation system.

(d) To report its findings to the supreme court.

(e) To review periodically with the supreme court the operation of the lawyer regulation system and to file an annual report with the supreme court of the system's activities during the preceding year.

(f) To propose for consideration by the supreme court substantive and procedural rules related to the regulation of lawyers.

(g) To inform and educate the public and the bar about the operation of the lawyer regulation system.

(h) To propose to the supreme court, after consultation with the director, an annual budget for the office of lawyer regulation.

(3) The board of administrative oversight has no substantive or procedural function in the lawyer regulation system as it concerns particular matters and does not exercise administrative oversight or supervision of the operation of the lawyer regulation system in respect to specific matters or proceedings involving allegations of attorney

misconduct or medical incapacity. A member of the board may not contact investigative or prosecutorial staff directly in respect to a particular investigative or prosecutorial matter, whether completed, pending or contemplated. A member of the board may contact investigative or prosecutorial staff directly and privately in respect to purely administrative matters.

(4) The board shall hold at least four regularly scheduled meetings each year. The meetings shall be open to the public except as otherwise provided by law. A majority of members currently serving constitutes a quorum of the board. At its first meeting each calendar year the board shall elect a chairperson, a vice-chairperson to act in the absence of the chairperson, and such other officers as it may consider necessary.

(5) The board shall take and retain full and complete minutes of the open and closed sessions of its meetings, including the identification of members whose motions, votes, and comments are recorded, and shall provide a copy of the minutes of the open session of each meeting to each member of the supreme court as soon as practicable following the meeting. The minutes of the open sessions are available to the public.

(6) Members of the board are entitled to reimbursement for expenses incurred in connection with membership on the board.

SCR 21.11 Training of lawyer regulation system participants.

(1) The director and current staff of the office of lawyer regulation shall provide formal training for new members of the staff.

(2) The director and current members of the preliminary review committee shall provide formal training to new members of the preliminary review committee.

(3) Formal training to the referees shall be provided as set forth in SCR 21.08.

(4) The director and current members of the board of administrative oversight shall provide formal training to the new members of the board of administrative oversight.

(5) The training provided in (1) through (2) and (4) shall emphasize the role and the importance of the contributions of public member participants in the lawyer regulation system.

SCR 21.12 Roles of office of lawyer regulation and grievant.

In the investigation process and in the prosecution of complaints alleging attorney misconduct and petitions alleging attorney medical incapacity, the director and staff of the office of lawyer regulation do not represent the complaining person, the attorney against whom a grievance has been made, the bar generally, or any other person or group. The director and staff of the office of lawyer regulation represent the interests of the supreme court and the public in the integrity of the lawyer regulation system in its search for the truth. A grievant is not a party to a misconduct or medical incapacity proceeding brought by the office of lawyer regulation.

SCR 21.13 Official duties.

When acting in the course of their official duties under SCR chs. 21 and 22, the following are acting on behalf of the supreme court in respect to the statutes and supreme court rules and orders regulating the conduct of attorneys:

- (1) The director and staff of the office of lawyer regulation.
- (2) Retained counsel.
- (3) Special investigators.
- (4) Members of the preliminary review committee.
- (5) Members of a special preliminary review panel.
- (6) Referees.
- (7) Members of the board of administrative oversight.
- (8) Attorneys designated by the director to monitor compliance

with diversion agreements or with conditions imposed by the supreme court in misconduct and medical incapacity proceedings, or to investigate or conduct a hearing in a reinstatement proceeding.

SCR 21.14 Conflict of interests, recusal.

(1) The following may not take part in a matter in which they are a complaining person, grievant, or respondent or in which their own interests outside of their official duties under SCR chs. 21 and 22 reasonably may be perceived to impair their impartiality or when a judge similarly situated would be disqualified under s. 757.19, 1997 stats. or recusal would be required under SCR 60.04(4):

- (a) The director and staff of the office of lawyer regulation.
- (b) Retained counsel.
- (c) Special investigators.
- (d) Members of the preliminary review committee.
- (e) Members of a special preliminary review panel.

(f) Referees.

(g) Attorneys designated by the director to monitor an attorney's participation in a diversion from discipline program or compliance with conditions imposed on the attorney's practice of law.

(h) Members of the board of administrative oversight.

(2) Allegations of misconduct or malfeasance against the director, staff of the office of lawyer regulation, retained counsel, a special investigator, a member of the preliminary review committee, a member of a special preliminary review panel, a referee, an attorney designated by the director to monitor an attorney's participation in a diversion from discipline program or compliance with conditions imposed on the attorney's practice of law, or a member of the board of administrative oversight shall be governed by the procedures under SCR 22.25.

SCR 21.15 Duties of attorneys.

(1) Pursuant to SCR 20:8.5(a), an attorney admitted to practice law or practicing law in Wisconsin is subject to the lawyer regulation system, whether he or she practices in Wisconsin or in other jurisdictions and regardless of where the attorney's conduct occurs.

(2) A license to practice law authorizes a person to practice law and to participate in the administration of justice. It is the duty of every attorney to act in conformity with standards imposed upon attorneys as conditions of the privilege to practice law set forth in SCR chapter 20: rules of professional conduct for attorneys.

(3) An attorney has the duty to refer a member of the public who wishes to communicate an inquiry about or a grievance against an attorney to the director.

(4) Every attorney shall cooperate with the office of lawyer regulation in the investigation, prosecution and disposition of grievances, complaints filed with or by the director, and petitions for reinstatement. An attorney's wilful failure to cooperate with the office of lawyer regulation constitutes violation of the rules of professional conduct for attorneys.

(5) An attorney found guilty or convicted of any crime on or after July 1, 2002, shall notify in writing the office of lawyer regulation and the clerk of the Supreme Court within 5 days after the finding or conviction, whichever first occurs. The notice shall include the identity of the attorney, the date of finding or conviction, the

offenses, and the jurisdiction. An attorney's failure to notify the office of lawyer regulation and clerk of the supreme court of being found guilty or his or her conviction is misconduct.

SCR 21.16 Discipline.

(1m) Any of the following may be imposed on an attorney as discipline for misconduct pursuant to the procedure set forth in SCR chapter 22:

- (a) Revocation of license to practice law.
- (b) Suspension of license to practice law.
- (c) Public or private reprimand.
- (d) Conditions on the continued practice of law.
- (e) Monetary payment.
- (em) Restitution, as provided under sub. (2m).
- (f) Conditions on seeking license reinstatement.

(2m) (a) An attorney may be ordered to do any of the following as restitution under sub. (1m)(em):

1. Pay monetary restitution to the person whose money or property was misappropriated or misapplied in the amount or value of such money or property as found in the disciplinary proceedings.

2. Reimburse the Wisconsin lawyers' fund for client protection for awards made to the person whose money or property was misappropriated or misapplied.

(b) Any payment made as restitution under par. (a) does not limit, preclude or impair any liability for damages in any civil action or proceeding for an amount in excess of the payment.

(c) Upon ordering restitution to the Wisconsin lawyers' fund for client protection under par. (a)2., the supreme court shall issue a judgment and furnish a transcript of the judgment to the Fund. The transcript of the judgment may be filed and docketed in the office of the clerk of court in any county and shall have the same force and effect as judgments docketed under ss. 809.25 and 806.16, stats.

Comment

A lawyer whose license to practice law in Wisconsin is revoked under SCR 21.16 may seek reinstatement under SCR 22.29, five years after the effective date of the revocation. See SCR 22.29(2).

SCR 21.17 Medical incapacity suspension, conditions.

The license of an attorney to practice law may be suspended indefinitely or conditions may be imposed on the attorney's practice of law with the attorney's consent or upon a finding that the attorney has a medical incapacity, pursuant to the procedure set forth in SCR chapter 22.

SCR 21.18 Limitation.

(1) Information, an inquiry, or a grievance concerning the conduct of an attorney shall be communicated to the director within six years after the person communicating the information, inquiry or grievance knew or reasonably should have known of the conduct, whichever is earlier, or shall be barred from proceedings under this chapter and SCR chapter 22.

(2) The time during which a person who knew or should have known of the attorney's conduct is under a disability as provided in Wis. Stat. § 893.16 and the time during which the attorney acted to conceal the conduct from or mislead the person who knew or should have known of the conduct regarding the conduct are not part of the time specified in sub. (1).

SCR 21.19 Privileges, immunity.

Communications with the director, staff of the office of lawyer regulation, a special investigator, retained counsel, the preliminary review committee, and a special preliminary review panel alleging attorney misconduct or medical incapacity and testimony given in an investigation or proceeding under SCR ch. 22 are privileged, except as provided under SCRs 22.03, 22.21, 22.34 and 22.40. No lawsuit predicated on any privileged or non-privileged communications referenced in this section may be instituted against any grievant or witness. The director, staff of the office of lawyer regulation, special investigators, retained counsel, members of the preliminary review committee, members of a special preliminary review panel, referees, members of the board of administrative oversight, and persons designated by the director to monitor compliance with diversion agreements or with conditions imposed on the attorney's practice of law, shall be immune from suit for any conduct in the course of their official duties.

SCR 21.20 Cooperation with other agencies.

(1) The office of lawyer regulation shall cooperate with the board of bar examiners in matters of mutual interest. The office and

the board may exchange confidential information and may conduct joint proceedings.

(2) The office of lawyer regulation shall cooperate with lawyer regulatory bodies from other jurisdictions and may share confidential information with them.

(3) The office of lawyer regulation shall cooperate with district attorneys in the state of Wisconsin and may share confidential information with them.

SCR 21.21 Cost of lawyer regulation system.

The cost of the office of lawyer regulation, the preliminary review committee, all matters relating to investigation and prosecution of possible attorney misconduct and medical incapacity, reinstatement investigations and hearings, and the board of administrative oversight shall be paid from the appropriation provided in s. 20.680 (3) (h), 1997 stats.

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