SCR CHAPTER 22

PROCEDURES FOR THE LAWYER REGULATION SYSTEM

SCR 22.001 Definitions.

In SCR chapter 21 and this chapter:

(1) "Attorney" means a person admitted to the practice of law in this state and a person admitted to practice in another jurisdiction who appears before a court or administrative agency in this state or engages in any other activity in this state that constitutes the practice of law.

(2) "Cause to proceed" means a reasonable belief based on a review of an investigative report that an attorney has engaged in misconduct or has a medical incapacity that may be proved by clear, satisfactory and convincing evidence.

(3) "Costs" means the compensation and necessary expenses of referees, fees and expenses of counsel for the office of lawyer regulation, a reasonable disbursement for the service of process or other papers, amounts actually paid out for certified copies of records in any public office, postage, telephoning, adverse examinations and depositions and copies, expert witness fees, witness fees and expenses, compensation and reasonable expenses of experts and investigators employed on a contractual basis, and any other costs and fees authorized by chapter 814 of the statutes.

(4) "Director" means the director of the office of lawyer regulation provided in SCR 21.03.

(5) "Grievance" means an allegation of possible attorney misconduct or medical incapacity received by the office of lawyer regulation.

(6) "Grievant" means the person who presents a grievance, except that a judicial officer or a district committee who communicates a matter to the office of lawyer regulation in the course of official duties is not a grievant.

(7) "Malfeasance" means a violation of the rules provided in SCR chapter 21 and this chapter.

(8) "Medical incapacity" means a physical, mental, emotional, social or behavioral condition that is recognized by experts in medicine or psychology as a principal factor which substantially prevents a person from performing the duties of an attorney to acceptable professional standards.

(9) "Misconduct" means any of the following:

(a) Violation or attempted violation of SCR chapter 20 - rules of professional conduct for attorneys, knowingly assisting or inducing another to do so, or doing so through the acts of another.

(b) Failure to cooperate in the investigation of a grievance.

(c) Engaging in prohibited conduct in respect to an attorney whose license to practice law is suspended or revoked.

(d) Commission of a criminal act that reflects adversely on an attorney's honesty, trustworthiness or fitness as an attorney in other respects.

(e) Engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

(f) Stating or implying an ability to influence improperly a government agency or official.

(g) Knowingly assisting a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

(h) Violation of a statute, supreme court rule, supreme court order or supreme court decision regulating the conduct of lawyers.

(j) Violation of the attorney's oath.

(9m) "Public member" means an individual who is eligible to vote in the state of Wisconsin, but who is not a member of the state bar of Wisconsin.

(10) "Respondent" means an attorney alleged in a grievance or in a complaint to have engaged in misconduct or alleged in a grievance or in a petition to have a medical incapacity.

ATTORNEY CONDUCT

SCR 22.01 Inquiries and grievances.

Any person may make an inquiry or a grievance to the office of lawyer regulation concerning the conduct of an attorney. Inquiries and grievances, except those from incarcerated persons, may be made by telephone. The staff may assist the person making

an inquiry or a grievance in clearly stating the inquiry or grievance. If assistance is given, staff may send the person making the inquiry or grievance a written statement, and if it accurately sets forth the inquiry or grievance, the person shall sign it and return it to the office of lawyer regulation.

SCR 22.02 Intake.

(1) The staff of the office of lawyer regulation shall receive and evaluate all inquiries and grievances concerning attorney conduct.

(2) The staff shall conduct a preliminary evaluation of the inquiry or grievance and may do any of the following:

(a) Forward the matter to another agency.

(b) Attempt to reconcile the matter between the grievant and the attorney if it is a minor dispute.

(c) Close the matter if it does not present sufficient information of cause to proceed.

(d) Refer the matter to the director with a recommendation that the matter be investigated by staff or diverted.

(3) If staff forwards the matter to another agency, it shall provide the grievant the reasons for doing so. The decision of staff is final, and there shall be no review of the decision.

(4) The staff shall notify the grievant in writing that the grievant may obtain review by the director of the staff's closure of a matter under sub. (2)(c) by submitting to the director a written request. The request for review must be received by the director within 30 days after the date of the letter notifying the grievant of the closure. The director may, upon a timely request by the grievant for additional time, extend the time for submission of additional information relating to the request for review. The decision of the director affirming the closure or referring the matter to staff for further evaluation is final, and there shall be no review of the director's decision.

(5) In the performance of duties under this chapter, staff may not give legal advice.

(6) The director shall review each matter referred by staff and do one or more of the following:

(a) Close the matter for lack of an allegation of possible misconduct or medical incapacity or lack of sufficient information of cause to proceed. The director shall notify the grievant in writing

that the grievant may obtain review by a preliminary review panel of the director's closure by submitting a written request to the director. The request for review must be received by the director within 30 days after the date of the letter notifying the grievant of the closure. The director shall send the request for review to the chairperson of the preliminary review committee, who shall assign it to a preliminary review panel. Upon a timely request by the grievant for additional time, the director shall report the request to the chairperson of the preliminary review committee, who may extend the time for submission of additional information relating to the request for review.

(b) Divert the matter to an alternatives to discipline program as provided in SCR 22.10.

(c) Commence an investigation when there is sufficient information to support an allegation of possible misconduct or medical incapacity.

SCR 22.03 Investigation.

(1) The director shall investigate any grievance that presents sufficient information to support an allegation of possible misconduct.

(2) Upon commencing an investigation, the director shall notify the respondent of the matter being investigated unless in the opinion of the director the investigation of the matter requires otherwise. The respondent shall fully and fairly disclose all facts and circumstances pertaining to the alleged misconduct within 20 days after being served by ordinary mail a request for a written response. The director may allow additional time to respond. Following receipt of the response, the director may conduct further investigation and may compel the respondent to answer questions, furnish documents, and present any information deemed relevant to the investigation.

(3) Staff involved in the investigation process shall include in reports to the director all relevant exculpatory and inculpatory information obtained.

(4) If the respondent fails to respond to the request for written response to an allegation of misconduct or fails to cooperate in other respects in an investigation, the director, or a special investigator acting under SCR 22.25, may file a motion with the supreme court requesting that the court order the respondent to show cause why his

or her license to practice law should not be suspended for willful failure to respond or cooperate with the investigation. All papers, files, transcripts, communications, and proceedings on the motion shall be confidential and shall remain confidential until the supreme court has issued an order to show cause. The license of an attorney suspended for willful failure to respond or cooperate with an investigation may be reinstated by the supreme court upon a showing of cooperation with the investigation and compliance with the terms of suspension. The director or the special investigator shall file a response in support of or in opposition to the reinstatement within 20 days after the filing of an attorney's request for reinstatement. Upon a showing of good cause, the supreme court may extend the time for filing a response.

(5)(a) Except as provided in sub (b), the director shall provide the grievant a copy of the respondent's response to the grievance and the opportunity to comment in writing on the respondent's response.

(b) In limited circumstances when good cause is shown, the director may provide the grievant a summary of the respondent's response prepared by the investigator in place of a copy of the response.

(6) In the course of the investigation, the respondent's wilful failure to provide relevant information, to answer questions fully, or to furnish documents and the respondent's misrepresentation in a disclosure are misconduct, regardless of the merits of the matters asserted in the grievance.

(7) The duty of the respondent to cooperate with the investigation does not affect the respondent's privilege against self-incrimination, but the privilege may be asserted only in respect to matters that may subject the respondent to criminal liability.

(8) The director, or a special investigator acting under SCR 22.25, may subpoena the respondent and others and compel any person to produce pertinent books, papers, and documents. The director, or a special investigator acting under SCR 22.25, may obtain expert assistance in the course of an investigation.

SCR 22.04 Referral to district committee.

(1) The director may refer a matter to a district committee for assistance in the investigation. A respondent has the duty to cooperate specified in SCR 21.15(4) and 22.03(2) in respect to the

district committee. The committee may subpoena and compel the production of documents specified in SCR 22.03(8) and 22.42.

(2) When the director refers a matter to a committee, the respondent may make a written request for the substitution of the investigator assigned to the matter by the committee chairperson, or may provide a written waiver of the right to request substitution. The request for substitution shall be made within 14 days after receipt of notice of the assignment of the investigator. One timely request for substitution shall be granted as a matter of right. Additional requests for substitution shall be granted by the committee chairperson for good cause. When a request for substitution is granted, the investigator initially assigned shall not participate further in the matter.

(3) The district committee shall conduct an investigation and file an investigative report with the director within 90 days after the date the respondent's right to request substitution of the investigator assigned to the matter under sub. (2) as a matter of right terminates or has been waived. The committee chairperson, with notice to the grievant and respondent, may request an extension of time to complete the investigative report from the director. The committee chairperson shall set forth the reasons for the request and the date by which a report will be filed in a written request for the extension. The director may approve or deny the request, in the director's discretion. The investigative report shall outline the relevant factual allegations and identify possible misconduct, if any, and may make a recommendation as to the disposition of the matter. The district committee shall include in reports to the director all relevant exculpatory and inculpatory information obtained.

(4) The director shall send a copy of the investigative report of the committee to the respondent and to the grievant. The respondent and the grievant each may submit a written response to the investigative report within 10 days after the date the report is sent to them.

(5) The director may withdraw the referral of a matter to a committee at any time, and the committee thereupon shall terminate its investigation.

SCR 22.05 Disposition of investigation.

(1) Upon completion of an investigation, the director may do one or more of the following:

(a) Dismiss the matter for lack of sufficient evidence of cause to proceed.

(b) Divert the matter to an alternatives to discipline program as provided in SCR 22.10.

(c) Obtain the respondent's consent to the imposition of a public or private reprimand and proceed under SCR 22.09.

(d) Present the matter to the preliminary review committee for a determination that there is cause to proceed in the matter.

(2) The director shall notify the grievant in writing that the grievant may obtain review by a preliminary review panel of the director's dismissal of a matter under sub. (1) by submitting to the director a written request. The request for review must be received by the director within 30 days after the date of the letter notifying the grievant of the dismissal. The director shall send the request to the chairperson of the preliminary review committee, who shall assign it to a preliminary review panel. Upon a timely request by the grievant for additional time, the director shall report the request to the chairperson of the preliminary review committee, who may extend the time for submission of additional information relating to the request for review.

(3) The preliminary review panel may affirm the dismissal or, if it determines that the director has exercised the director's discretion erroneously, refer the matter to the director for further investigation. A majority vote of the panel is required to find that the director has exercised discretion erroneously. The panel's decision is final, and there shall be no review of the panel's decision. The chairperson of the preliminary review committee shall notify the grievant and the respondent in writing of the panel's decision.

SCR 22.06 Presentation to preliminary review committee.

(1) The director shall submit investigative reports, including all relevant exculpatory and inculpatory information obtained and appendices and exhibits, if any, pursuant to SCR 22.05(1)(d) to the chairperson of the preliminary review committee. The chairperson shall assign each matter to a panel for consideration.

(2) The director shall provide each member of the panel a copy of the investigative report in the matter assigned to the panel and the responses of the respondent and the grievant, if any.

(3) The director and staff designated by the director shall appear before the panel and summarize the investigative reports and the director's position in the matter.

SCR 22.07 Preliminary review panels - procedure.

(1) The preliminary review panels shall review the matters assigned to them and determine in each whether there is cause for the director to proceed.

(2) The meetings and deliberations of the panels are private and confidential. The panels shall take and retain full and complete minutes of their meetings.

(3) If the panel determines that there is cause for the director to proceed in the matter, it shall so inform the director in writing. A determination of cause to proceed shall be by the affirmative vote of four or more members of the panel and does not constitute a determination that there is clear, satisfactory and convincing evidence of misconduct.

(4) If the panel determines that the director has failed to establish cause to proceed, it shall report the determination to the chairperson of the preliminary review committee, who shall notify the director, the respondent, and the grievant of the determination.

SCR 22.08 Response to cause to proceed determination.

(1)(a) If the preliminary review panel determines that the director has not established cause to proceed in the matter, the director may dismiss the matter, which is a final decision, or the director may continue the investigation and resubmit the matter to a different panel within a reasonable time after the first panel's determination. The director shall notify the respondent and the grievant of the decision to dismiss the matter or continue the investigation.

(b) Following resubmission, if the panel determines that the director has failed to establish cause to proceed, it shall report the determination to the chairperson of the preliminary review committee, who shall dismiss the matter and notify in writing the director, the respondent, and the grievant of the dismissal. A decision of the panel on resubmission that the director has failed to establish cause to proceed is final, and there is no review of that decision.

(c) (Repealed)

(2) If the preliminary review panel or the panel on resubmission determines that the director has established cause to proceed in the matter, the director shall decide on the appropriate discipline or other disposition to seek in the matter and may do any of the following:

(a) Obtain the respondent's consent to the imposition of a public or private reprimand.

(b) Divert the matter to an alternatives to discipline program as provided in SCR 22.10.

(c) File with the supreme court and prosecute a complaint alleging misconduct.

SCR 22.09 Consensual private and public reprimands.

(1) An agreement between the director and an attorney to the imposition of a private or public reprimand shall be in a writing dated and signed by the respondent and the director and shall contain a summary of the factual nature of the misconduct and an enumeration of the rules of professional conduct for attorneys that were violated.

(2) The director shall request the appointment of a referee by providing in confidence to the clerk of the supreme court the names of the grievant and respondent, the address of the respondent's principal office, and the date of the consent agreement. The clerk of the supreme court shall select a referee based on availability and geographic proximity to the respondent's principal office. The chief justice or, in his or her absence, the senior justice shall appoint the referee. The director shall submit the agreement, accompanied by the respondent's public and private disciplinary history, to the appointed referee for review and approval. The director shall send a copy of the agreement to the grievant. The grievant may submit a written response to the director within 30 days after being notified of the agreement, and the director shall submit the response to the referee. The respondent and the director may submit comments to the referee regarding the grievant's response. The agreement, the grievant's response, and the comments of the respondent and director shall be considered by the referee in confidence.

(3) If the referee approves the agreement, the referee shall issue the reprimand in writing to the respondent and send a copy to the director. A private reprimand shall be confidential.

(4) If the referee determines that the agreement is not supported by sufficient facts or that the sanction falls outside the range of sanctions appropriate in similar cases, the referee shall not approve the agreement. The referee shall, in those cases, inform the director, the grievant, and the respondent in writing, stating the basis and reasons for disapproval. The director shall then proceed in the matter as the director may consider appropriate.

(5) If the respondent does not consent to a reprimand offered by the director or the respondent's consent is unacceptable to the director, the director may file a complaint with the supreme court alleging the same factual misconduct and seeking the same reprimand to which consent was sought.

SCR 22.10 Diversion to alternatives to discipline program.

(1) *Offer of diversion.* At intake, during an investigation, or at the conclusion of an investigation, if the director determines that the matter should be diverted to an alternatives to discipline program, the director may offer the attorney the opportunity to participate in the program. If the attorney rejects the offer, the matter shall proceed as otherwise provided in this chapter. Diversion to an alternatives to discipline program does not constitute discipline under this chapter.

(2) *Alternatives to discipline program.* The alternatives to discipline program may include mediation, fee arbitration, law office management assistance, evaluation and treatment for alcohol and other substance abuse, psychological evaluation and treatment, medical evaluation and treatment, monitoring of the attorney's practice or trust account procedures, continuing legal education, ethics school, and the multistate professional responsibility examination, including those programs offered by the state bar of Wisconsin.

(3) *Eligibility for participation.* An attorney may participate in an alternatives to discipline program when there is little likelihood that the attorney will harm the public during the period of participation, when the director can adequately supervise the conditions of the program, and when participation in the program is likely to benefit the attorney and accomplish the goals of the program. Unless good cause is shown, an attorney may not participate in an alternatives to discipline program if any of the following circumstances is present:

(a) The discipline likely to be imposed in the matter is more severe than a private reprimand.

(b) The misconduct involves misappropriation of funds or property of a client or a third party.

(c) The misconduct involves a serious crime as set forth in SCR 22.20(2).

(d) The misconduct involves family violence.

(e) The misconduct resulted in or is likely to result in actual injury, such as loss of money, legal rights, or valuable property rights, to a client or other person unless restitution is made a condition of diversion.

(f) The attorney has been publicly disciplined within the preceding five years.

(g) The matter is of the same nature as misconduct for which the attorney has been disciplined within the preceding five years.

(h) The misconduct involves dishonesty, fraud, deceit, or misrepresentation.

(i) The misconduct involves sexual relations prohibited under SCR 20:1.8.

(j) The misconduct is the same as that for which the attorney previously has participated in an alternatives to discipline program.

(k) The misconduct is part of a pattern of similar misconduct.

(4) *Diversion agreement.* If the attorney agrees to diversion to an alternatives to discipline program, the terms of the diversion shall be set forth in a written agreement between the attorney and the director. The agreement shall specify the program to which the attorney is diverted, the general purpose of the diversion, the manner in which the attorney's compliance with the program is to be monitored, and the requirement, if any, for payment of restitution or costs. If the diversion agreement is entered into after the director has reported the matter to the preliminary review committee, pursuant to SCR 22.06(1), the agreement shall be submitted for approval to the preliminary review panel to which the matter has been assigned. If the preliminary review panel rejects the agreement, the matter shall proceed as otherwise provided in this chapter.

(5) *Costs of diversion.* The attorney shall pay all costs incurred in connection with participation in an alternatives to discipline program, unless the program provides otherwise, and the office of lawyer regulation shall not be responsible for payment of the costs.

(6) *Effect of diversion.* (a) When the attorney enters into the alternatives to discipline program, the underlying matter shall be held in abeyance and the file shall note the diversion.

(b) If the director determines that the attorney has successfully completed all requirements of the alternatives to discipline program, the director shall do one of the following:

(i) Close the file in the matter if the director had not determined that the matter warranted investigation or reported the matter to the preliminary review committee, pursuant to SCR 22.06(1).

(ii) Dismiss the matter if the director had determined that the matter warranted investigation or reported the matter to the preliminary review committee, pursuant to SCR 22.06(1).

(7) *Breach of diversion agreement.* (a) If the director has reason to believe that the attorney has breached a diversion agreement entered into prior to a report of the matter to the preliminary review committee, pursuant to SCR 22.06(1), the attorney shall be given the opportunity to respond, and the director may modify the diversion agreement or terminate the diversion agreement and proceed with the matter as otherwise provided in this chapter.

(b) If the director has reason to believe that the attorney has breached a diversion agreement entered into after the matter was reported to the preliminary review committee, pursuant to SCR 22.06(1), the director shall give written notice of the facts establishing the breach to the attorney and to the preliminary review panel that approved the diversion agreement. The attorney may submit a written response to the preliminary review panel within 20 days after notice is given. The director has the burden to establish by a preponderance of the evidence the materiality of the breach; the attorney has the burden to establish by a preponderance of the evidence justification for the breach. If, after consideration of the information presented by the director and the attorney's response, if any, the panel determines that the breach was material and without justification, the agreement shall be terminated and the matter shall proceed as otherwise provided in this chapter. If the panel determines that the breach was not material or that there was justification, the director may modify the diversion agreement in response to the breach. If the panel determines there was no breach,

the matter shall proceed pursuant to the terms of the original diversion agreement.

(c) If the alleged breach is referred for determination to a preliminary review panel under par. (b), upon motion of either party, a referee selected and appointed pursuant to SCR 22.13(3) shall hold a hearing on the matter. Upon conclusion of the hearing, the referee shall submit written findings of fact and conclusions of law to the panel.

(8) *Confidentiality of files and records.* All files and records of the diversion of a matter shall be confidential, except as the supreme court may order otherwise. Information regarding misconduct disclosed to a treatment provider by an attorney while in an alternatives to discipline program need not be disclosed to the office of lawyer regulation, provided the misconduct occurred prior to the attorney's entry into the program.

SCR 22.11 Initiation of proceeding.

(1) The director shall commence a proceeding alleging misconduct by filing a complaint and an order to answer with the supreme court and serving a copy of each on the respondent.

(2) The complaint shall set forth only those facts and misconduct allegations for which the preliminary review panel determined there was cause to proceed and may set forth the discipline or other disposition sought. Facts and misconduct allegations arising under SCR 22.20 and SCR 22.22 may be set forth in a complaint without a preliminary review panel finding of cause to proceed.

(3) The director may retain counsel to file, serve and prosecute the complaint.

(4) The complaint shall be entitled: In the Matter of Disciplinary Proceedings Against [name of respondent], Attorney at Law; Office of Lawyer Regulation, Complainant; [name of respondent], Respondent. The complaint shall be captioned in the supreme court and contain the name and residence address of the respondent or the most recent address furnished by the respondent to the state bar.

(5) The complaint may be amended as provided in the rules of civil procedure.

SCR 22.12 Stipulation.

(1) The director may file with the complaint a stipulation of the director and the respondent to the facts, conclusions of law regarding misconduct, and discipline to be imposed. The supreme court may consider the complaint and stipulation without the appointment of a referee.

(2) If the supreme court approves a stipulation, it shall adopt the stipulated facts and conclusions of law and impose the stipulated discipline.

(3) If the supreme court rejects the stipulation, a referee shall be appointed and the matter shall proceed as a complaint filed without a stipulation.

(4) A stipulation rejected by the supreme court has no evidentiary value and is without prejudice to the respondent's defense of the proceeding or the prosecution of the complaint.

SCR 22.13 Service of the complaint.

(1) The complaint and the order to answer shall be served upon the respondent in the same manner as a summons under section 801.11(1) of the statutes. If, with reasonable diligence, the respondent cannot be served under section 801.11(1)(a) or (b) of the statutes, service may be made by sending by certified mail an authenticated copy of the complaint and order to answer to the most recent address furnished by the respondent to the state bar.

(2) Service of other pleadings and papers shall be in the manner provided in the rules of civil procedure.

(3) Except as provided in SCR 22.12, upon receipt of proof of service of the complaint, the clerk of the supreme court shall select a referee from the panel provided in SCR 21.08, based on availability and geographic proximity to the respondent's principal office, and the chief justice or, in his or her absence, the senior justice shall appoint the referee to conduct a hearing on the complaint.

(4) Within 10 days after notice of appointment of the referee, the director and the respondent each may file with the supreme court a motion for substitution of the referee. The filing of the motion does not stay the proceedings before the referee unless ordered by the supreme court. One timely motion filed by the director and one timely motion filed by the respondent shall be granted as a matter of right. Additional motions shall be granted for good cause.

(5) Following the appointment of a referee, the parties shall file all papers and pleadings with the supreme court and serve a copy on the referee.

SCR 22.14 Answer, no contest.

(1) The respondent shall file an answer with the supreme court and serve a copy on the office of lawyer regulation within 20 days after service of the complaint. The referee may, for cause, set a different time for the filing of the answer.

(2) The respondent may by answer plead no contest to allegations of misconduct in the complaint. The referee shall make a determination of misconduct in respect to each allegation to which no contest is pleaded and for which the referee finds an adequate factual basis in the record. In a subsequent disciplinary or reinstatement proceeding, it shall be conclusively presumed that the respondent engaged in the misconduct determined on the basis of a no contest plea.

SCR 22.15 Scheduling conference.

(1) The referee shall hold a scheduling conference within 20 days after the time for answer and may do so by telephone. Each party shall participate in person or by counsel. If no answer is filed, the referee may hear any motions, including a motion for default, at the scheduling conference.

(2) If an answer is filed, the referee shall do all of the following:

(a) Provide for depositions upon request of either party and for time limits for the completion of depositions.

(b) Determine the form and extent of other discovery to be allowed and time limits for its completion.

(c) Define the issues and determine if they can be simplified.

(d) Determine the necessity or desirability of amending the pleadings.

(e) Determine if the parties can stipulate to any facts or agree to the identity or authenticity of documents.

(f) Determine if trial briefs are to be filed and the time limits for filing.

(g) Consider any other matter which may aid in the disposition of the proceeding.

(3) The referee may adjourn the scheduling conference or order additional scheduling conferences. Upon conclusion of the

conference, the referee shall issue an order which shall control the proceedings, including all matters determined at the scheduling conference.

SCR 22.16 Proceedings before a referee.

(1) The referee has the powers of a judge trying a civil action and shall conduct the hearing as the trial of a civil action to the court. The rules of civil procedure and evidence shall be followed. The referee shall obtain the services of a court reporter to make a verbatim record of the proceedings, as provided in SCR 71.01 to 71.03.

(2) The hearing shall be held in the county of the respondent's principal office or, in the case of a non-resident attorney, in the county designated by the director. The referee, for cause, may designate a different location.

(3) Unless otherwise provided by law or in this chapter, the hearing before a referee and any paper filed in the proceeding is public.

(4)(a) If in the course of the proceeding the respondent claims to have a medical incapacity that makes the defense of the proceeding impossible, the referee shall conduct a hearing and make findings concerning whether a medical incapacity makes defense of the proceeding impossible. The referee may order the examination of the respondent by qualified medical or psychological experts.

(b) All papers, files, transcripts, communications, and proceedings on the issue of medical incapacity shall be confidential and shall remain confidential until the supreme court has issued an order suspending the attorney's license to practice law, or has otherwise authorized disclosure.

(c) If the referee finds no medical incapacity that would make the defense of the proceeding impossible, the referee shall proceed with the misconduct action.

(d) If the referee finds that a medical incapacity makes the defense of the proceeding impossible, the referee shall file a report promptly with the supreme court. If the court disapproves the referee's finding, the court shall direct the referee to proceed with the misconduct action. If the court approves the referee's finding, the court shall abate the misconduct proceeding and suspend the respondent's license to practice law for medical incapacity until the court orders reinstatement of the attorney's license under SCR

22.36. Upon reinstatement, the court shall direct the referee to proceed with the misconduct action.

(5) The office of lawyer regulation has the burden of demonstrating by clear, satisfactory and convincing evidence that the respondent has engaged in misconduct.

(6) Within 30 days after the conclusion of the hearing or the filing of the hearing transcript, whichever is later, the referee shall file with the supreme court a report setting forth findings of fact, conclusions of law regarding the respondent's misconduct, if any, and a recommendation for dismissal of the proceeding or the imposition of specific discipline.

(7) The referee shall file with the supreme court a recommendation as to the assessment of reasonable costs within 10 days after the parties' submissions regarding assessment of costs.

COMMENT

The court's general policy regarding assessment of costs in lawyer disciplinary matters is set forth in SCR 22.24.

Procedures for filing the statement on costs and objecting to a statement on costs are set forth in SCR 22.24 (2).

If the respondent does not object to the statement of costs then the referee's recommendation regarding costs shall be filed within 10 days of the deadline for filing an objection. If an objection is filed the recommendation shall be filed within 10 days after receiving the OLR's reply to the objection.

SCR 22.17 Review; appeal.

(1) Within 20 days after the filing of the referee's report, the director or the respondent may file with the supreme court an appeal from the referee's report.

(2) If no appeal is filed timely, the supreme court shall review the referee's report; adopt, reject or modify the referee's findings and conclusions or remand the matter to the referee for additional findings; and determine and impose appropriate discipline. The court, on its own motion, may order the parties to file briefs in the matter.

(3) An appeal from the report of a referee is conducted under the rules governing civil appeals to the supreme court. The supreme court shall place the appeal on its first assignment of cases after the briefs are filed.

SCR 22.18 Motion for reconsideration.

(1) The director or the respondent may seek reconsideration of the judgment or opinion of the supreme court by filing a motion for reconsideration within 20 days after the decision of the court is filed.

(2) The filing of a motion for reconsideration does not stay enforcement of the judgment. A request for a stay pending determination of the motion for reconsideration shall be made to the supreme court.

SCR 22.19 Petition for consensual license revocation.

(1) An attorney who is the subject of an investigation for possible misconduct or the respondent in a proceeding may file with the supreme court a petition for the revocation by consent or his or her license to practice law.

(2) The petition shall state that the petitioner cannot successfully defend against the allegations of misconduct.

(3) If a complaint has not been filed, the petition shall be filed in the supreme court and shall include the director's summary of the misconduct allegations being investigated. Within 20 days after the date of filing of the petition, the director shall file in the supreme court a recommendation on the petition. Upon a showing of good cause, the supreme court may extend the time for filing a recommendation.

(4) If a complaint has been filed, the petition shall be filed in the supreme court and served on the director and on the referee to whom the proceeding has been assigned. Within 20 days after the filing of the petition, the director shall file in the supreme court a response in support of or in opposition to the petition and serve a copy on the referee. Upon a showing of good cause, the supreme court may extend the time for filing a response. The referee shall file a report and recommendation on the petition in the supreme court within 30 days after receipt of the director's response.

(5) The supreme court shall grant the petition and revoke the petitioner's license to practice law or deny the petition and remand the matter to the director or to the referee for further proceedings.

SCR 22.20 Summary license suspension on criminal conviction.

(1) *Summary suspension.* Upon receiving satisfactory proof that an attorney has been found guilty or convicted of a serious

crime, the supreme court may summarily suspend the attorney's license to practice law pending final disposition of a disciplinary proceeding, whether the finding of guilt or the conviction resulted from a plea of guilty or no contest or from a verdict after trial and regardless of the pendency of an appeal.

(2) *Serious crime, definition.* In this rule, "serious crime" means a felony or any lesser crime which, in the opinion of the court, reflects adversely on the attorney's fitness to be licensed to practice law.

(3) *Reinstatement on reversal.* The license of an attorney that has been summarily suspended under sub. (1) shall be reinstated forthwith upon the reversal of the conviction. The reinstatement shall not terminate any disciplinary proceeding then pending against the attorney.

(4) *Filing certificate of finding of guilt, conviction.* The clerk of a court within the state in which an attorney is found guilty or convicted of any crime shall send a certificate of the finding of guilt or of the conviction to the clerk of the supreme court within five days after the finding or conviction, whichever first occurs.

(5) *Proof of guilt.* In a proceeding based on an attorney's having been found guilty or convicted of a crime, a certified copy of the record in the proceeding or the certificate of conviction shall be conclusive evidence of the attorney's guilt of the crime of which found guilty or convicted.

(6) *Filing of complaint.* The director, or special investigator acting under SCR 22.25, shall file the complaint in the disciplinary proceeding within 2 months of the effective date of the summary suspension or shall show cause why the summary suspension should continue. The respondent attorney may file a response with the supreme court within 10 days of service. Reinstatement under this section does not terminate any misconduct investigation or disciplinary proceeding pending against the attorney.

(7) *Filing of referee report.* The referee appointed to conduct a hearing on the complaint shall conduct the hearing promptly and file the report required by SCR 22.16 no later than 3 months after the filing of the complaint. In the event the report is not filed within 3 months of the filing of the complaint, the respondent attorney may move the supreme court for reinstatement pending completion of the disciplinary proceeding. Reinstatement under this section does not

terminate any misconduct investigation or disciplinary proceeding pending against the attorney.

SCR 22.21 Temporary suspension.

(1) The supreme court, on its own motion, upon the motion of the director, or upon the motion of a special investigator acting under SCR 22.25, may suspend temporarily an attorney's license to practice law where it appears that the attorney's continued practice of law poses a threat to the interests of the public and the administration of justice.

(2) Before entering an order suspending an attorney's license under sub. (1), the supreme court shall order the attorney to show cause why the license to practice law should not be suspended temporarily. The attorney shall file with the supreme court a written response to the order and serve a copy of the response on the director within the time set forth in the order. The director, or special investigator acting under SCR 22.25, may file a memorandum in support of or in opposition to the temporary license suspension within 10 days after the attorney's response is filed. All papers, files, transcripts, communications, and proceedings shall be confidential and shall remain confidential until the supreme court has issued an order to show cause.

(3) *Filing of complaint.* The director, or a special investigator acting under SCR 22.25, shall file the complaint in the disciplinary proceeding within 4 months of the effective date of the temporary suspension imposed under this section, or shall show cause why the temporary suspension should continue. The respondent attorney may file a response with the supreme court within 10 days of service. Reinstatement under this section shall not terminate any misconduct investigation or disciplinary proceeding pending against the attorney.

(4) *Filing of referee report.* The referee appointed to conduct a hearing on the complaint shall conduct the hearing promptly and file the report required by SCR 22.16 no later than 6 months after the filing of the complaint. If the report is not filed within 6 months of the filing of the complaint, the respondent attorney may move the supreme court for reinstatement pending completion of the disciplinary proceeding. Reinstatement under this section does not terminate any misconduct investigation or disciplinary proceeding pending against the attorney.

SCR 22.22 Reciprocal discipline.

(1) An attorney on whom public discipline for misconduct or a license suspension for medical incapacity has been imposed by another jurisdiction shall promptly notify the director of the matter. Failure to furnish the notice within 20 days of the effective date of the order or judgment of the other jurisdiction constitutes misconduct.

(2) Upon the receipt of a certified copy of a judgment or order of another jurisdiction imposing discipline for misconduct or a license suspension for medical incapacity of an attorney admitted to the practice of law or engaged in the practice of law in this state, the director may file a complaint in the supreme court containing all of the following:

(a) A certified copy of the judgment or order from the other jurisdiction.

(b) A motion requesting an order directing the attorney to inform the supreme court in writing within 20 days of any claim of the attorney predicated on the grounds set forth in sub. (3) that the imposition of the identical discipline or license suspension by the supreme court would be unwarranted and the factual basis for the claim.

(3) The supreme court shall impose the identical discipline or license suspension unless one or more of the following is present:

(a) The procedure in the other jurisdiction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process.

(b) There was such an infirmity of proof establishing the misconduct or medical incapacity that the supreme court could not accept as final the conclusion in respect to the misconduct or medical incapacity.

(c) The misconduct justifies substantially different discipline in this state.

(4) Except as provided in sub. (3), a final adjudication in another jurisdiction that an attorney has engaged in misconduct or has a medical incapacity shall be conclusive evidence of the attorney's misconduct or medical incapacity for purposes of a proceeding under this rule.

(5) The supreme court may refer a complaint filed under sub. (2) to a referee for a hearing and a report and recommendation

pursuant to SCR 22.16. At the hearing, the burden is on the party seeking the imposition of discipline or license suspension different from that imposed in the other jurisdiction to demonstrate that the imposition of identical discipline or license suspension by the supreme court is unwarranted.

(6) If the discipline or license suspension imposed in the other jurisdiction has been stayed, any reciprocal discipline or license suspension imposed by the supreme court shall be held in abeyance until the stay expires.

SCR 22.23 Publication of disposition.

(1) With the exception of the supreme court's disposition of a private reprimand or dismissal of a proceeding, the supreme court's disposition of a proceeding under this chapter shall be published in an official publication of the state bar of Wisconsin and in the official publications specified in SCR 80.01. A party may file a request to publish a dismissal of a proceeding.

(2) The director shall send notice of a public reprimand or a license suspension or revocation to the state bar of Wisconsin and to a newspaper of general circulation in each county in which the attorney maintained an office for the practice of law.

(3) The director shall notify all judges in the state of a license suspension or revocation.

SCR 22.24 Assessment of costs.

(1) The supreme court may assess against the respondent all or a portion of the costs of a disciplinary proceeding in which misconduct is found, a medical incapacity proceeding in which it finds a medical incapacity, or a reinstatement proceeding and may enter a judgment for costs. The director may assess all or a portion of the costs of an investigation when discipline is imposed under SCR 22.09. Costs are payable to the office of lawyer regulation.

(1m) The court's general policy is that upon a finding of misconduct it is appropriate to impose all costs, including the expenses of counsel for the office of lawyer regulation, upon the respondent. In some cases the court may, in the exercise of its discretion, reduce the amount of costs imposed upon a respondent. In exercising its discretion regarding the assessment of costs, the court will consider the statement of costs, any objection and reply, the recommendation of the referee, and all of the following factors:

(a) The number of counts charged, contested, and proven.

(b) The nature of the misconduct.

(c) The level of discipline sought by the parties and recommended by the referee.

(d) The respondent's cooperation with the disciplinary process.

(e) Prior discipline, if any.

(f) Other relevant circumstances.

(2) In seeking the assessment of costs by the supreme court, the director shall file in the court, with a copy to the referee and the respondent, a statement of costs within 20 days after the filing of the referee's report or a SCR 22.12 or 22.34(10) stipulation, together with a recommendation regarding the costs to be assessed against the respondent. If an appeal of the referee's report is filed or the supreme court orders briefs to be filed in response to the referee's report, a supplemental statement of costs and recommendation regarding the assessment of costs shall be filed within 20 days of the date of oral argument or, if no oral argument is held, the filing date of the last brief on appeal. The recommendation should explain why the particular amount of costs is being sought. The respondent may file an objection to the statement of costs and recommendation within 21 days after service of the statement of costs. A respondent who objects to a statement of costs must explain, with specificity, the reasons for the objection and must state what he or she considers to be a reasonable amount of costs. The objection may include relevant supporting documentation. The office of lawyer regulation may reply within 11 days of receiving the objection. In proceeding before a referee the referee shall make a recommendation to the court regarding costs. The referee should explain the recommendation addressing the factors set forth in SCR 22.24 (lm). The referee shall consider the submissions of the parties and the record in the proceeding. No further discovery or hearing is authorized.

(3) Upon the assessment of costs by the supreme court, the clerk of the supreme court shall issue a judgment for costs and furnish a transcript of the judgment to the director. 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 pursuant to Wis. Stat. §§ 809.25 and 806.16 (1997-98).

SCR 22.25 Misconduct and malfeasance allegations against lawyer regulation system participants.

(1) Allegations of misconduct against the director, a lawyer member of staff, retained counsel, a lawyer member of a district committee, a lawyer member of the preliminary review committee, a lawyer member of the board of administrative oversight, or a referee shall be assigned by the director for investigation to a special investigator. The supreme court shall appoint lawyers who are not currently participating in the lawyer regulation system and are not among the lawyers from whom retained counsel is selected under SCR 21.05 to serve as special investigators. The director shall assign a special investigator in rotation. A special investigator may discuss confidential matters with other special investigators. All records of matters referred to a special investigator or to the special preliminary review panel shall be retained by the director as required under SCR 22.44 and 22.45.

(2) Within 14 days after notice of assignment of a matter to a special investigator, the respondent may make a written request for the substitution of the special investigator. One timely request for substitution shall be granted by the director as a matter of right. Additional requests for substitution shall be granted for good cause. When a request for substitution is granted, the special investigator initially assigned shall not participate further in the matter.

(3) If the special investigator determines that there is not sufficient information to support an allegation of possible misconduct, the special investigator may close the matter. The special investigator shall notify the grievant in writing that the grievant may obtain review by the special preliminary review panel of the closure by submitting a written request to the special investigator. The request for review must be received by the special investigator within 30 days after the date of the letter notifying the grievant of the closure. The special investigator shall send the request for review to the special preliminary review panel consisting of 4 lawyers and 3 public members appointed by the supreme court and having a quorum of 4 members. Members of the special preliminary review panel serve staggered 3-year terms. A member may serve not more than 2 consecutive 3-year terms. Upon a timely request by the grievant for additional time, the special investigator shall report the request to the chairperson of the special preliminary

review panel, who may extend the time for submission of additional information relating to the request for review. If the panel affirms the investigator's determination, the special preliminary review panel shall inform the grievant. The panel's decision affirming closure of the matter is final. If the panel does not concur in the investigator's determination, it shall direct the investigator to initiate an investigation of the matter.

(4) If the special investigator determines that the information provided is sufficient to support an allegation of possible misconduct, the special investigator shall conduct an investigation of the matter. Upon completion of the investigation, the special investigator shall do one of the following:

(a) The special investigator may dismiss the matter and notify the grievant in writing that the grievant may obtain review of the dismissal by submitting to the special investigator a written request. The request for review must be received within 30 days after the date of the letter notifying the grievant of the dismissal. The special investigator shall send the request for review to the special preliminary review panel. Upon a timely request by the grievant for additional time, the special investigator shall report the request to the chairperson of the special preliminary review panel, who may extend the time for submission of additional information relating to the request for review. If the panel affirms the investigator's determination, the special preliminary review panel shall inform the grievant. The panel's decision affirming dismissal of the matter is final. If the panel does not concur in the investigator's determination, the panel shall direct the investigator to investigate the matter further.

(b) The special investigator may prepare an investigative report and send a copy of it to the respondent and to the grievant. The respondent and grievant each may submit to the special investigator a written response to the report within 10 days after the copy of the report is sent.

(5) The special investigator may submit the investigative report and the response of the respondent and the grievant, if any, to the special preliminary review panel to determine whether there is cause for the special investigator to proceed in the matter. A determination of cause to proceed shall be by the affirmative vote of four or more members of the panel and does not constitute a

determination that there is clear, satisfactory and convincing evidence of misconduct.

(6)(a) If the special preliminary review panel determines that cause to proceed in the matter has not been established, the special investigator may dismiss the matter, which is a final decision, or the special investigator may continue the investigation and resubmit the matter to the special preliminary review panel within a reasonable time after the panel's determination.

(b) Following resubmission, if the special preliminary review panel determines that the special investigator has failed to establish cause to proceed, it shall dismiss the matter and notify in writing the special investigator, the respondent, and the grievant of the dismissal.

(c) The special preliminary review panel shall notify the grievant in writing that the grievant may obtain review by a referee of the panel's dismissed by submitting a written request to the director. The referee shall be selected by the clerk of the supreme court, based on availability and geographic proximity to the respondent's principal office, and appointed by the chief justice or, in his or her absence, by the senior justice. The request for review must be received within 30 days after the date of the letter notifying the grievant of the dismissal. The director may, upon a timely request by the grievant for additional time, extend the time for submission of additional information relating to the request for review. The decision of the referee affirming the dismissal or referring the matter to the special investigator for further investigation is final, and there shall be no review of the referee's decision.

(7) If the special preliminary review panel determines that there is cause to proceed in the matter, the special investigator may take any of the actions set forth in SCR 22.08(2). The special investigator need not obtain approval of a diversion agreement from the special preliminary review panel. In cases where the special investigator files a complaint with the supreme court, the special investigator may prosecute the complaint personally or may assign responsibility for filing, serving, and prosecuting the complaint to counsel retained by the director for such purposes.

(8) Allegations of malfeasance against the director, retained counsel, a member of a district committee, a member of the

preliminary review committee, a member of the board of administrative oversight, a special investigator, a member of the special preliminary review panel, or a referee shall be referred by the director to the supreme court for appropriate action.

(9) Allegations of malfeasance against a member of the staff of the office of lawyer regulation shall be referred to the director for appropriate personnel action.

SCR 22.26 Activities following suspension or revocation.

(1) On or before the effective date of license suspension or revocation, an attorney whose license is suspended or revoked shall do all of the following:

(a) Notify by certified mail all clients being represented in pending matters of the suspension or revocation and of the attorney's consequent inability to act as an attorney following the effective date of the suspension or revocation.

(b) Advise the clients to seek legal advice of their choice elsewhere.

(c) Promptly provide written notification to the court or administrative agency and the attorney for each party in a matter pending before a court or administrative agency of the suspension or revocation and of the attorney's consequent inability to act as an attorney following the effective date of the suspension or revocation. The notice shall identify the successor attorney of the attorney's client or, if there is none at the time notice is given, shall state the client's place of residence.

(d) Within the first 15 days after the effective date of suspension or revocation, make all arrangements for the temporary or permanent closing or winding up of the attorney's practice. The attorney may assist in having others take over clients' work in progress.

(e) Within 25 days after the effective date of suspension or revocation, file with the director an affidavit showing all of the following:

(i) Full compliance with the provisions of the suspension or revocation order and with the rules and procedures regarding the closing of the attorney's practice.

(ii) A list of all jurisdictions, including state, federal and administrative bodies, before which the attorney is admitted to practice.

(iii) A list of clients in all pending matters and a list of all matters pending before any court or administrative agency, together with the case number of each matter.

(f) Maintain records of the various steps taken under this rule in order that, in any subsequent proceeding instituted by or against the attorney, proof of compliance with the rule and with the suspension or revocation order is available.

(2) An attorney whose license to practice law is suspended or revoked or who is suspended from the practice of law may not engage in this state in the practice of law or in any law work activity customarily done by law students, law clerks, or other paralegal personnel, except that the attorney may engage in law related work in this state for a commercial employer itself not engaged in the practice of law.

(3) Proof of compliance with this rule is a condition precedent to reinstatement of the attorney's license to practice law.

SCR 22.27 Activities of other attorneys.

(1) An attorney may not use in a firm name, letterhead or other written form the name of an attorney whose license is suspended or revoked.

(2) An attorney may not authorize or knowingly permit an attorney whose license is suspended or revoked to do any of the following:

(a) Interview clients or witnesses, except that in the course of employment by a commercial employer, the attorney may interview witnesses and participate in the investigation of claims.

(b) Prepare cases for trial.

(c) Do any legal research or other law work activity in a law office.

(d) Write briefs or trial memoranda.

(e) Perform any law related services for a member of the Wisconsin bar, either on a salary or a percentage or a fee-splitting basis, except that an attorney may share attorney fees on a quantum meruit basis only for services performed prior to suspension or revocation.

(3) An attorney may not permit an attorney whose license is suspended or revoked or who is suspended from the practice of law to engage in any activity prohibited by SCR 22.26.

(4) An attorney's failure to comply with this rule may constitute misconduct.

SCR 22.28 License reinstatement.

(1) An attorney suspended from the practice of law for nonpayment of state bar membership dues or failure to comply with the trust account certification requirement or continuing legal education requirements may seek reinstatement under the following rules, as applicable:

(a) An attorney whose suspension for nonpayment of state bar membership dues has been for a period of less than 3 consecutive years may seek reinstatement under SCR 10.03 (6m) (a).

(b) An attorney whose suspension for failure to comply with the continuing legal education requirements has been for a period of less than 3 consecutive years may seek reinstatement under SCR 31.11 (1).

(c) An attorney whose suspension for nonpayment of state bar membership dues has been for a period of 3 or more consecutive years may seek reinstatement under SCR 10.03 (6m) (b).

(d) An attorney whose suspension for failure to comply with the continuing legal education requirements has been for a period of 3 or more consecutive years may seek reinstatement under SCR 31.11 (1m).

(e) An attorney who has been suspended for failure to comply with the trust account certification requirement under SCR 20:1.15 (g) may seek reinstatement under SCR 10.03 (6m) (c).

(2) The license of an attorney suspended for misconduct for less than six months shall be reinstated by the supreme court upon the filing of an affidavit with the director showing full compliance with all the terms and conditions of the order of suspension and the director's notification to the supreme court of the attorney's full compliance.

(3) The license of an attorney that is revoked or suspended for misconduct for six months or more shall be reinstated pursuant to the procedure set forth in SCR 22.29 to 22.33 and only by order of the supreme court.

SCR 22.29 Petition for reinstatement.

(1) A petition for reinstatement of a license suspended for a definite period may be filed at any time commencing three months prior to the expiration of the suspension period.

(2) A petition for reinstatement of a license that is revoked may be filed at any time commencing five years after the effective date of revocation.

(3) A petition for reinstatement shall be filed in the supreme court. A copy of the petition shall be served on the director and on the board of bar examiners.

(3m) The petitioner shall file 9 copies of a petition for reinstatement.

(4) The petition for reinstatement shall show all of the following:

(a) The petitioner desires to have the petitioner's license reinstated.

(b) The petitioner has not practiced law during the period of suspension or revocation.

(c) The petitioner has complied fully with the terms of the order of suspension or revocation and will continue to comply with them until the petitioner's license is reinstated.

(d) The petitioner has maintained competence and learning in the law by attendance at identified educational activities.

(e) The petitioner's conduct since the suspension or revocation has been exemplary and above reproach.

(f) The petitioner has a proper understanding of and attitude toward the standards that are imposed upon members of the bar and will act in conformity with the standards.

(g) The petitioner can safely be recommended to the legal profession, the courts and the public as a person fit to be consulted by others and to represent them and otherwise act in matters of trust and confidence and in general to aid in the administration of justice as a member of the bar and as an officer of the courts.

(h) The petitioner has fully complied with the requirements set forth in SCR 22.26.

(j) The petitioner's proposed use of the license if reinstated.

(k) A full description of all of the petitioner's business activities during the period of suspension or revocation.

(4m) The petitioner has made restitution to or settled all claims of persons injured or harmed by petitioner's misconduct, including reimbursement to the Wisconsin lawyers' fund for client protection for all payments made from that fund, or, if not, the petitioner's explanation of the failure or inability to do so.

COMMENT

An attorney seeking reinstatement of a suspended or revoked license is required to reimburse the Fund for any payments made to injured clients as a result of the attorney's conduct, or to explain why this is not possible. Fund payment to a client signifies that the lawyer's dishonest conduct caused a loss that was restored through an assessment against all members of the bar. The attorney responsible should be required to reimburse the Fund before resuming practice. In cases where the attorney demonstrates that he or she cannot make full restitution to injured clients and to the Fund, the Fund will defer its right to reimbursement until the clients have been made whole.

(5) A petition for reinstatement shall be accompanied by an advance deposit in an amount to be set by the supreme court for payment of all or a portion of the costs of the reinstatement proceeding. The supreme court may extend the time for payment or waive payment in any case in which to do otherwise would result in hardship or injustice.

SCR 22.30 Reinstatement procedure.

(1) The clerk of the supreme court shall select a referee from the panel provided in SCR 21.08, based on availability and geographic proximity to the petitioner's place of residence, and the chief justice or, in his or her absence, the senior justice shall appoint the referee to conduct a hearing on the petition for reinstatement. In the case of a license suspension, the hearing shall not be held prior to the expiration of the period of suspension. Following the appointment of a referee, the parties shall file all papers and pleadings with the supreme court and serve a copy on the referee.

(2) The director shall investigate the eligibility of the petitioner for reinstatement and file a response with the referee in support of or in opposition to the petition within the time period ordered by the referee.

(2m) The board of bar examiners shall determine the attendance and reporting requirements of the petitioner as required by SCR 31.06 and file a report with the referee within the time period ordered by the referee.

(3) At least 30 days prior to the hearing, the director shall publish a notice in a newspaper of general circulation in any county in which the petitioner maintained an office for the practice of law prior to suspension or revocation and in the county of the petitioner's residence during the suspension or revocation and in an official publication of the state bar of Wisconsin.

(4) The notice under sub. (3) shall contain a brief statement of the nature and date of suspension or revocation, the matters required to be proved for reinstatement, and the date, time and location of the hearing on the petition.

SCR 22.31 Reinstatement hearing.

(1) The petitioner has the burden of demonstrating, by clear, satisfactory, and convincing evidence, all of the following:

(a) That he or she has the moral character to practice law in Wisconsin.

(b) That his or her resumption of the practice of law will not be detrimental to the administration of justice or subversive of the public interest.

(c) That his or her representations in the petition, including the representations required by SCR 22.29(4)(a) to (m) and 22.29(5), are substantiated.

(d) That he or she has complied fully with the terms of the order of suspension or revocation and with the requirements of SCR 22.26.

(2) The reinstatement hearing shall be public.

(3) The referee shall appoint a person to act as court reporter to make a verbatim record of the proceeding as provided in SCR 71.01 to 71.03.

(4) The petitioner and the director or a person designated by the director shall appear at the hearing. The petitioner may be represented by counsel.

(5) The hearing shall be conducted pursuant to the rules of civil procedure. The rules of evidence shall not apply, and the referee may consider any relevant information presented. Interested persons may present information in support of or in opposition to reinstatement.

SCR 22.32 Report of the referee; response.

(1) Within 30 days after the conclusion of the hearing or the filing of the hearing transcript, whichever is later, the referee shall file in the supreme court a report setting forth findings and a recommendation on the petition for reinstatement.

(2) Within 10 days after the filing of the referee's report, the petitioner and the director may file in the supreme court a response to the report.

SCR 22.33 Review; appeal.

(1) The director or the petitioner may file in the supreme court an appeal from the referee's report within 20 days after the filing of the report.

(2) An appeal from the report of the referee is conducted under the rules governing civil appeals to the supreme court. The supreme court shall place the appeal on its first assignment of cases after the briefs are filed.

(3) If no appeal is timely filed, the supreme court shall review the referee's report, order reinstatement, with or without conditions, deny reinstatement, or order the parties to file briefs in the matter.

(4) If the supreme court denies a petition for reinstatement, the petitioner may again file a petition for reinstatement commencing nine months after the denial.

ATTORNEY MEDICAL INCAPACITY

SCR 22.34 Medical incapacity proceedings.

(1) An attorney's license to practice law may be suspended indefinitely or conditions may be imposed on the attorney's practice of law upon a finding that the attorney has a medical incapacity.

(2) The director shall investigate any matter that presents sufficient information to support an allegation of possible medical incapacity.

(3) The respondent shall cooperate with the investigation by providing medical releases necessary for the review of medical records relevant to the allegations.

(4) The investigation shall be conducted in confidence.

(5) The director shall prepare an investigative report and send a copy of it to the respondent. The respondent may submit to the director a written response to the investigative report within 10 days after receipt of the report.

(6) Upon completion of an investigation, the director may do one or more of the following:

(a) Dismiss the matter for lack of sufficient evidence to believe the attorney has a medical incapacity.

(b) Present the matter to the preliminary review committee for a determination that there is cause to proceed in the matter.

(7) The director shall submit to the preliminary review panel the investigative report, including an outline of the factual allegations and all exhibits, and the respondent's response, if any.

(8) If the preliminary review panel determines that the director has established cause to proceed, the director shall file a petition with the supreme court for the suspension of the respondent's license to practice law or the imposition of conditions on the respondent's practice of law. A determination of cause to proceed shall be by the affirmative vote of 4 or more members of the panel and does not constitute a finding that there is clear, satisfactory, and convincing evidence of an attorney's medical incapacity.

(9) The procedures under SCR 22.11 to 22.24 for a disciplinary proceeding are applicable to a medical incapacity proceeding, except as otherwise expressly provided. The office of lawyer regulation has the burden of demonstrating by clear, satisfactory and convincing evidence that the respondent has a medical incapacity.

(10) The petition may be accompanied by a stipulation of the director and the respondent to a suspension or to the imposition of conditions on the respondent's practice of law. The supreme court may consider the petition and stipulation without the appointment of a referee. If the supreme court approves the stipulation, it shall issue an order consistent with the stipulation. If the supreme court rejects the stipulation, the clerk of the supreme court shall select a referee from the panel provided in SCR 21.08, based on availability and geographic proximity to the respondent's place of residence, the chief justice or, in his or her absence, the senior justice shall appoint the referee, and the matter shall proceed as a petition filed without a stipulation. A stipulation rejected by the supreme court has no evidentiary value and is without prejudice to the respondent's defense of the proceeding or the prosecution of the petition.

(11)(a) An attorney who is the subject of an investigation or petition for possible medical incapacity may request the indefinite suspension of the attorney's license to practice law. The request shall state that it is filed because the petitioner cannot successfully defend against the allegations of medical incapacity. A request for suspension shall be filed with whichever of the following is applicable:

1. Prior to the filing of a petition by the director, a request for suspension shall be filed in the supreme court and include the director's summary of the medical incapacity allegations being investigated. Within 20 days after the filing of the request, the director shall file with the supreme court a response in support of or in opposition to the request.

2. After the director has filed a petition, the request for suspension shall be filed in the supreme court and served on the director and the referee to whom the matter is assigned. Within 20 days after the filing of the request, the director shall file a response in support of or in opposition to the request. The referee shall file a report and recommendation with the supreme court within 30 days after the filing of the director's response.

(b) The supreme court shall grant the request and suspend indefinitely the attorney's license to practice law or deny the request and remand the matter to the director or to the referee for further proceedings.

(12) All papers, files, transcripts, communications and proceedings shall be confidential and shall remain confidential until the supreme court has issued an order revoking, suspending indefinitely, or imposing conditions on the attorney's license to practice law, except that acknowledgement that a proceeding is pending and notification to another court before which a similar petition is pending may be made when considered necessary by the director and that any publication the supreme court considers necessary may be made.

(13) The referee may order the examination of the respondent by qualified medical or psychological experts and may appoint counsel to represent the respondent.

(15m) Following appointment of a referee, the parties shall file all papers and pleadings with the supreme court and serve a copy of those documents on the referee.

SCR 22.341 Review; appeal.

(1) The director, or the respondent, may file an appeal of the referee's report with the supreme court within 20 days after the report is filed.

(2) If no appeal is timely filed, the supreme court shall review the report of the referee and order the suspension of the respondent's license to practice law, the imposition of conditions on the

respondent's practice of law, or other appropriate action. The court may order the parties to file briefs in the matter.

(3) An appeal from the report of a referee is conducted under the rules governing civil appeals to the supreme court. The supreme court shall place the appeal on its first assignment of cases after the briefs are filed.

SCR 22.35 Medical incapacity determined by a court.

A court finding an attorney mentally ill, drug dependent or an alcoholic under Wis. Stat. chapter 51 (1997-98) or an incompetent or spendthrift under Wis. Stat. chapter 880 (1997-98) shall immediately file a copy of the findings and order with the supreme court and the director. The supreme court shall order the attorney to show cause why the attorney's license to practice law should not be suspended by reason of medical incapacity. If cause satisfactory to the court is not shown, the court shall suspend the attorney's license to practice law for an indefinite period. The procedure set forth in this chapter for medical incapacity proceedings does not apply to this rule.

SCR 22.36 Reinstatement; removal of conditions.

(1) An attorney whose license to practice law is suspended or whose practice of law is subject to conditions for medical incapacity may petition the supreme court at any time for reinstatement of the license or the removal of conditions.

(2) The supreme court shall refer the petition to the director for investigation to determine whether the attorney's medical incapacity has been removed.

(3) The filing of a petition for reinstatement constitutes a waiver of any privilege existing between the petitioner and any psychiatrist, psychologist, physician or other health care provider that has provided care to the attorney. The petitioner shall disclose the name of every psychiatrist, psychologist, physician and other health care provider that has provided care following suspension or the imposition of conditions and shall furnish the director written consent to the release of information and records requested by the medical experts appointed by the director or a referee.

(4) The director may direct a medical or psychological examination of the petitioner by such qualified experts as the director designates and may direct that the expense of the examination be paid by the petitioner.

(5) Following the investigation, the petition shall be submitted to a referee selected by the clerk of the supreme court, based on geographic proximity to the respondent's place of residence, and appointed by the chief justice or, in his or her absence, the senior justice.

(6) The petitioner has the burden of showing by clear, satisfactory and convincing evidence that the medical incapacity has been removed and that the petitioner is fit to resume the practice of law, with or without conditions.

(7) The referee shall hold a hearing on the petition, if necessary, and file a report and recommendation in the supreme court.

(8) If an attorney whose license to practice law has been suspended for medical incapacity pursuant to SCR 22.35 is thereafter judicially declared to be no longer in the condition previously determined under Wis. Stat. chapter 51 or chapter 880 (1997-98), the supreme court may direct reinstatement of the attorney's license, with or without conditions.

GENERAL PROVISIONS

SCR 22.37 Time limitations.

Time limitations set forth in this chapter are directory and not jurisdictional except as otherwise provided in SCR chapter 21 and this chapter.

SCR 22.38 Standard of proof.

Allegations of misconduct in a complaint, allegations of medical incapacity in a petition, and character and fitness to practice law shall be established by evidence that is clear, satisfactory and convincing.

SCR 22.39 Burden of proof.

The director, or a special investigator acting under SCR 22.25, has the burden of proof in proceedings seeking discipline for misconduct or license suspension or the imposition of conditions for medical incapacity. In proceedings seeking license reinstatement, readmission to the practice of law, removal of a medical incapacity, removal of conditions imposed on the practice of law, and discipline different from that imposed in another jurisdiction, the proponent has the burden of proof.

SCR 22.40 Confidentiality.

(1) Prior to the filing of a misconduct complaint, medical incapacity petition, or petition for temporary license suspension, all papers, files, transcripts, and communications in any matter involving the office of lawyer regulation are to be held in confidence by the director and staff of the office of lawyer regulation, the members of the district committees, special investigators, the members of the special preliminary review panel, and the members of the preliminary review committee. Following the filing of a complaint or petition, the proceeding and all papers filed in it are public, except where expressly provided otherwise in this chapter or by law.

(2) The director may provide relevant information to the respondent, to the grievant, to an appropriate authority for the appointment of judges, to other attorney or judicial disciplinary agencies, to other jurisdictions investigating qualifications for admission to practice, and to law enforcement agencies investigating qualifications for government employment. The supreme court may authorize the release of confidential information to other persons or agencies.

(3) The director may provide relevant information to a district attorney or U.S. attorney where there is substantial evidence of an attorney's possible criminal conduct.

(4) If there is publicity concerning the fact that an attorney is the subject of an investigation or disciplinary or medical incapacity proceeding, the director may issue an explanatory statement. If there is publicity concerning alleged misconduct or medical incapacity of an attorney and it is determined that there is no basis for further proceedings and there is no recommendation of discipline, the director may issue an explanatory statement.

(5) In order to provide guidance to the bar, the director may provide the state bar of Wisconsin a summary of facts and violations of the rules of professional conduct for attorneys in a matter in which a private reprimand has been imposed. The summary shall be published in an official publication of the state bar of Wisconsin but may not disclose information identifying the attorney reprimanded.

(6) The director may provide relevant information to the supreme court when seeking the temporary suspension of an attorney's license.

(7) The director may provide relevant information to a state bar lawyer assistance program when making a referral pursuant to SCR 21.03(9).

SCR 22.41 Pending litigation.

Neither the director nor a referee may defer, except for cause, a matter or proceeding because of substantial similarity to the material allegations of pending criminal or civil litigation.

SCR 22.42 Subpoena.

(1) In any matter under investigation, the director, district committee, or a special investigator acting under SCR 22.25, may require the attendance of lawyers and witnesses and the production of documentary evidence. A subpoena issued in connection with a confidential investigation must so indicate on its face. It is not a breach of confidentiality for a person subpoenaed to consult with an attorney.

(2) In any disciplinary proceeding before a referee, the director, or the director's counsel, a special investigator acting under SCR 22.25, and the respondent or counsel for the respondent may require the attendance of witnesses and the production of documentary evidence. The use of subpoenas for discovery in a matter pending before a referee shall be pursuant to an order of the referee. The service, enforcement, or challenge to any subpoena issued under this rule shall be governed by ch. 885, stats., except as otherwise provided in this chapter.

(2m) (a) The director may issue a subpoena under this chapter to compel the attendance of witnesses and the production of documents in Wisconsin, or elsewhere as agreed by the witnesses, if a subpoena is sought in Wisconsin under the law of another jurisdiction for use in a lawyer discipline or disability investigation or proceeding in that jurisdiction, and the application for issuance of the subpoena has been approved or authorized under the law of that jurisdiction.

(b) In a lawyer discipline or disability investigation or proceeding in this jurisdiction, the director, special investigator, or respondent may apply for the issuance of a subpoena in another jurisdiction, under the rules of that jurisdiction when the application is in aid or defense of the investigation or proceeding, and the director, special investigator, or respondent could issue compulsory process or obtain formal prehearing discovery under this chapter.

(3) A referee may enforce the attendance of a witness and the production of documentary evidence.

(4) The referee shall rule on a challenge to the validity of a subpoena. If a referee has not been assigned to the matter, a challenge to a subpoena issued by the director shall be filed with the supreme court together with a petition for the appointment of a referee to rule on the challenge.

(5) Subpoena and witness fees and mileage are allowable and paid as provided in Wis. Stat. §§ 885.05 and 885.06(2). A witness subpoenaed during an investigation shall be paid subpoena fees and mileage by the person requesting the subpoena. A witness subpoenaed to appear at a disciplinary or medical incapacity hearing before the referee shall be paid subpoena fees and mileage by the party on whose behalf the witness appears.

SCR 22.43 Cooperation of district attorney.

Upon request, a district attorney shall assist and provide relevant information to the director in the investigation of possible attorney misconduct.

SCR 22.44 Retention of records.

Records of all matters in which a complaint or petition is filed with the supreme court or in which discipline is imposed shall be retained for at least 10 years. Records of all other matters shall be retained for at least three years.

SCR 22.45 Expungement of records.

(1) Records of matters that are closed without investigation or dismissed shall be expunged from the files of the office of lawyer regulation three years following the end of the year in which the closure or dismissal occurred.

(2) Upon written application to the board of administrative oversight, for good cause, and with written notice to the attorney and opportunity for the attorney to respond, the director may request that records that otherwise would be expunged under sub. (1) be retained for such additional period not to exceed three years as the board considers appropriate. The director may request further extensions of the period of retention when a previous request has been granted.

(3) The attorney who was the subject of a matter or proceeding commenced under this chapter shall be given prompt

written notice of the expungement of the record of the matter or proceeding.

(4) The effect of expungement is that the matter or proceeding shall be considered never to have been commenced. In response to a general or specific inquiry concerning the existence of a matter or proceeding the record of which has been expunged, the director shall state that no record of the matter or proceeding exists. In response to an inquiry about a specific matter or proceeding the record of which has been expunged, the attorney who was the subject of the matter or proceeding may state that the matter or proceeding was closed or dismissed and that the record of the matter or proceeding was expunged pursuant to this rule. No further response to an inquiry into the nature or scope of a matter or proceeding the record of which has been expunged need be made by the director or by the attorney.

CHARACTER AND FITNESS INVESTIGATIONS

SCR 22.46 Character and fitness investigations of bar admission applicants.

(1) Upon request of the board of bar examiners, the director shall investigate the character and fitness of an applicant for admission to the bar.

(2) In the investigation, the applicant shall make a full and fair disclosure of all facts and circumstances pertaining to questions involving the applicant's character and fitness. Failure to provide information or misrepresentation in a disclosure constitutes grounds for denial of admission.

SCR 22.47 Investigative Report.

The director shall report the result of each investigation to the board of bar examiners.

SCR 22.48 Costs.

The director may assess all or part of the costs of the investigation against the applicant. The director may waive payment of costs in any case in which to do otherwise would result in hardship or injustice.

Chapter repealed and recreated by S.Ct. Order 99-03, effective October 1, 2000. Amended November 14, 2001; January 23, 2002; October 9, 2003, May 14, 2004, August 2, 2004; November 19, 2004; May 5, 2005, July 1, 2006; July 1, 2010, January 1, 2012. January 23, 2013.