

SUPREME COURT OF WISCONSIN

No. 13-05A

**In the matter of the Petition to Create a
Procedure for Enforcement of Supreme Court
Disciplinary Orders.**

FILED

MAY 22, 2017

Diane M. Fremgen
Clerk of Supreme Court
Madison, WI

This rule petition has a long procedural history. On May 29, 2013, the State Bar of Wisconsin, the Chair of the Board of Administrative Oversight, and the Director of the Office of Lawyer Regulation (OLR) filed a rule petition asking the court to create a supreme court rule providing a procedure for enforcement of Supreme Court disciplinary orders.

The issue giving rise to the petition emerged in the context of lawyer disciplinary cases. Supreme Court Rule 20:8.4(f) provides that it is professional misconduct for a lawyer to violate a supreme court order or supreme court decision regulating the conduct of lawyers. Thus, a lawyer's failure to comply with a supreme court order is grounds for the OLR to commence a separate disciplinary complaint against the lawyer. See *In re Disciplinary Proceedings Against Lister*, 2012 WI 102, ¶19, 343 Wis. 2d 532, 817 N.W.2d 867. However, this can be a cumbersome process. So, the OLR has occasionally filed a motion with the supreme court, asking the court to enforce an order pursuant to its inherent constitutional authority to enforce its disciplinary

orders. See, e.g., In re Disciplinary Proceedings Against LeSieur, 2013 WI 39, 347 Wis. 2d 190, 832 N.W.2d 67.

In Lister the court noted that there are no provisions in the court's rules governing (1) the ability of the OLR to file a motion in the original disciplinary proceeding to impose sanctions on an attorney for failing to comply with a prior disciplinary decision, or (2) the procedure by which such a motion should be filed and resolved. The court directed the OLR to file a rule petition proposing such a procedure. Id., ¶29. This rule petition was the result.

Upon receipt of the rule petition, the court requested additional information and solicited public comment. The Supreme Court Commissioners Office filed a comment expressing concerns with the petition and proposing a number of amendments to the petition.

On October 25, 2013 the court conducted a public hearing on the petition. The OLR Director Keith Sellen presented the petition to the court. He indicated the petitioners agreed with some, but not all of the supreme court commissioners' recommendations. No other comments were received.

At the court's ensuing open rules conference, the court discussed the petition. The court determined that there were issues that warranted further consideration including: whether the rule should be limited to a lawyer's willful failure to comply with a disciplinary order, whether additional procedural requirements are warranted such as a right of appeal, whether the rule should include motions for contempt, and the appropriate burden of proof. The court directed the OLR to confer with the supreme court commissioners and

other interested entities to prepare a revised proposal for the court. See S. Ct. Order 13-05 (issued June 24, 2014).

The OLR and the supreme court commissioners submitted a revised proposal to the court on March 5, 2015.

The court discussed the revised proposal at the December 14, 2015 open rules conference. The court was dissatisfied with different aspects of this proposal and Justice David T. Prosser offered to undertake another review of the rule.

Since that time, the court has appointed the OLR Procedure Review Committee, which has a subcommittee dedicated to considering changes in the OLR process.

At the April 20, 2017 open rules conference, the court discussed the petition again. The court determined that this complex issue would benefit from study and review by the OLR Procedure Review Committee.¹ The court voted to dismiss the petition and refer the matter to the OLR Procedure Review Committee.

IT IS ORDERED that rule petition 13-05 is dismissed.

IT IS FURTHER ORDERED that the OLR Procedure Review Committee is asked to evaluate and include in its report to the court a recommendation as to whether follow-up action is warranted in the wake of this court's decision to dismiss this petition and, if so, propose a procedural mechanism by which the OLR may file and the court decide a motion filed by the OLR in the original disciplinary

¹ It is the mission of the OLR Procedure Review Committee to review OLR procedures and structure, and to report to the Wisconsin Supreme Court recommendations that would increase the efficiency, effectiveness, and fairness of the OLR process.

proceeding to impose sanctions on an attorney for failing to comply with a prior supreme court order.

Dated at Madison, Wisconsin, this 22nd day of May, 2017.

BY THE COURT:

Diane M. Fremgen
Clerk of Supreme Court

