

SUPREME COURT OF WISCONSIN

NOTICE

This order is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 08-28

In the matter of creation of procedures for lawyer support and monitoring and procedures for referrals from the Office of Lawyer Regulation.

FILED**MAY 14, 2010**

David R. Schanker
Clerk of Supreme Court
Madison, WI

On December 29, 2008, the State Bar of Wisconsin (State Bar), by its then-President, Diane S. Diel, and the Office of Lawyer Regulation (OLR), by its director, Keith L. Sellen, jointly petitioned this court to establish procedures for lawyer support and monitoring within the State Bar and for OLR to refer lawyers for assessment, treatment, and monitoring.

On October 29, 2009, the court conducted a public hearing on this matter. At the ensuing open administrative conference the court discussed this petition, together with Rule 08-13, In the matter of creation of Supreme Court Rule SCR 40.075 Relating to Conditional Admission to the Bar.¹ At the conclusion of the open conference the court directed additional research on certain aspects of the petition. The court discussed the matter

¹ Rule petition 08-13 is held in abeyance pursuant to this court's order dated August 3, 2009.

again at its open administrative conference on April 27, 2010, and voted to adopt the petition as set forth herein. Chief Justice Abrahamson dissented from the adoption of SCR 10.05(4)(m)2; Justice Bradley also dissents from the adoption of SCR 10.05(4)(m)2.

IT IS ORDERED that, effective July 1, 2010, the Supreme Court Rules are amended as follows:

SECTION 1. 10.05 (4) (m) of the Supreme Court Rules is created to read:

10.05 (4) (m) 1. 'Establishment.' The board of governors may provide assistance programs, including assistance in law office management, and assistance to judges, lawyers, law students, and their families in coping with alcoholism and other addictions, mental illness, physical disability, and other problems related to or affecting the practice of law. The board may establish committees, hire staff, and obtain volunteers as reasonably necessary to provide assistance. The board shall establish policies consistent with the purposes of the state bar and in furtherance of the public interest in the competence and integrity of the legal profession.

2. 'Privileges, immunity.' Communications with an assistance committee member, staff, or volunteers by any person providing information in good faith are privileged; no lawsuit based upon these communications may be instituted by any person. In providing assistance services, the board, members of assistance committees, staff, and volunteers designated by the

board shall be immune from suit for any conduct in the course of their official duties.

3. 'Confidentiality.' All communications with an assistance committee member, staff, or volunteer, and all records of program assistance to a person are confidential and shall not be disclosed, except in any of the following circumstances:

a. With the express consent of the person provided assistance.

b. When required as a condition for monitoring.

c. When reasonably necessary to prevent death or substantial bodily harm to the person assisted or to another.

d. When reasonably necessary to prevent child abuse or elder abuse.

e. When reporting is mandated by other law.

SECTION 2. 21.03 (9) of the Supreme Court Rules is created to read:

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

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

(b) The lawyer is subject to conditions on the continued practice of law or conditions on seeking license reinstatement

and the director determines a state bar lawyer assistance program would be the appropriate entity to monitor conditions.

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

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

SECTION 3. 21.19 of the Supreme Court Rules is amended to read:

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

SECTION 4. 22.40 (7) of the Supreme Court Rules is created to read:

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

IT IS FURTHER ORDERED that three years after the effective date of this order the petitioners, the State Bar of Wisconsin and the Office of Lawyer Regulation, shall provide the court with a written report advising the court of the impact of the adoption of SCR 10.05(4)(m).

IT IS FURTHER ORDERED that notice of the creation and amendment of these rules be given by a single publication of a copy of this order and of the petition in the official state newspaper and in an official publication of the State Bar of Wisconsin.

Dated at Madison, Wisconsin, this 14th day of May, 2010.

BY THE COURT:

David R. Schanker
Clerk of Supreme Court

¶1 SHIRLEY S. ABRAHAMSON, C.J. (*dissenting*). I dissent from the adoption of SCR 10.05(4)(m)2 because, as drafted, the immunity afforded by SCR 10.05(4)(m)2 is broader than is needed to protect persons providing assistance to judges, lawyers, law students, and their families in coping with alcoholism and other addictions, mental illness, physical disability. I would draft the provision more narrowly.

