

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. 01-12

In the matter of the Amendment to
Supreme Court Rules relating to
the Lawyer Regulation System

FILED

JAN 23, 2002

Cornelia G. Clark
Clerk of Supreme Court
Madison, WI

On September 20, 2001, the court held a public hearing on the petition filed on June 22, 2001, by the Director of the Office of Lawyer Regulation seeking to amend the Supreme Court Rules, including rules in chapters 10, 11, 12, 20, 21, 22, 31, 60, and 62, as they relate to the Lawyer Regulation System. The court has considered the matters presented at the public hearing and the materials filed in the matter. On November 14, 2001, the court filed an order addressing some of the amendments. The court now addresses the remaining amendments proposed by the petitioner.

IT IS ORDERED that the Supreme Court Rules are amended as follows:

SECTION 1. 10.03 (6m) of the Supreme Court Rules is created to read:

10.03 **(6m)** PETITION FOR REINSTATEMENT FROM SUSPENSION FOR NONPAYMENT OF DUES OR FAILURE TO FILE A TRUST ACCOUNT CERTIFICATE. (a) An attorney whose suspension for nonpayment of annual membership dues for state bar operations has been for a period of less than 3 consecutive years shall be reinstated as a member by the state bar board of governors if he or she makes full payment of the amount owing and an additional payment of \$20 as a penalty. The secretary of the state bar shall certify the reinstatement to the clerk of the supreme court.

(b) An attorney whose suspension for nonpayment of annual membership dues for state bar operations has been for a period of 3 or more consecutive years may file a petition for reinstatement with the supreme court. A copy of the petition shall be served on the board of bar examiners and the office of lawyer regulation. Separate payments in the amount of \$200 each shall be made to the board of bar examiners and the office of lawyer regulation and shall accompany the petition. Within 90 days after service of the petition for reinstatement, the board shall make a determination regarding compliance and file its finding with the supreme court. Within 90 days after service of the petition for reinstatement, the director of the office of lawyer regulation shall investigate the eligibility of the petitioner for reinstatement and file a response with the supreme court in support of or in opposition to the petition.

(c) An attorney suspended from the practice of law for failure to comply with the trust account certification requirement under SCR 20:1.15 (g) shall be reinstated as a member by the state bar board of governors if he or she files the prescribed certificate. The secretary of the state bar shall certify the reinstatement to the clerk of the supreme court.

SECTION 2. 10.03 (7) of the Supreme Court Rules is amended to read:

10.03 **(7)** VOLUNTARY RESIGNATION OF MEMBERSHIP. If a member of the state bar files with the executive director a written notice of the member's surrender of his or her license to practice law and the acceptance by the supreme court of his or her resignation in the state bar, the person shall then cease to be a member of the state bar and his or her name shall be removed from the membership register. Before accepting a resignation, the supreme court shall request from the office of lawyer regulation information concerning whether the attorney is the subject of any pending grievances, investigations, or proceedings.

SECTION 3. 11.03 of the Supreme Court Rules is repealed.

SECTION 4. 21.05 (1) of the Supreme Court Rules is amended to read:

21.05 **(1)** Staff of the office of lawyer regulation may include persons admitted to the practice of law in Wisconsin whose duties are to conduct or assist in investigations, present matters to the preliminary review panels, ~~and~~ prosecute complaints alleging attorney misconduct and petitions alleging

attorney medical incapacity, conduct or assist in reinstatement investigations and represent the office of lawyer regulation in hearings, and perform other duties assigned by the director.

SECTION 5. 21.05 (2) of the Supreme Court Rules is amended to read:

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

SECTION 6. 21.12 of the Supreme Court Rules is amended to read:

21.12 Roles of office of lawyer regulation, grievant, and district committees. In the investigation process and in the prosecution of complaints alleging attorney misconduct and petitions alleging attorney medical incapacity, the director and staff of the office of lawyer regulation and the district committees do not represent the complaining person, the attorney against whom a grievance has been made, the bar generally, or any other person or group. The director, staff of the office of lawyer regulation, and district committees represent the interests of the supreme court and the public in the integrity

of the lawyer regulation system in its search for the truth. A grievant is not a party to a misconduct or medical incapacity proceeding brought by the office of lawyer regulation.

SECTION 7. 21.13 of the Supreme Court Rules is amended to read:

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

(1) ~~the~~ The director and staff of the office of lawyer regulation~~.~~.

(2) ~~retained~~ Retained counsel~~.~~.

(3) ~~members~~ Members of district ~~investigative~~ committees~~.~~.

(4) ~~members of a special investigative panel~~ Special investigators~~.~~.

(5) ~~members~~ Members of the preliminary review committee~~.~~.

(6) ~~members~~ Members of a special preliminary review panel~~;~~;

(7) ~~referees~~ Referees~~.~~.

(8) ~~members~~ Members of the board of administrative oversight~~and.~~.

(9) ~~attorneys~~ Attorneys designated by the director to monitor compliance with diversion agreements or with conditions imposed by the supreme court in misconduct and medical incapacity proceedings, or to investigate or conduct a hearing in a reinstatement proceeding ~~are acting on behalf of the~~

~~supreme court in respect to the statutes and supreme court rules and orders regulating the conduct of attorneys.~~

SECTION 8. 21.14 (1) of the Supreme Court Rules is amended to read:

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

(a) The director and staff of the office of lawyer regulation.

(b) ~~retained~~ Retained counsel.

(c) ~~members~~ Members of district investigative committees.

(d) ~~members of a special investigative panel~~ Special investigators.

(e) ~~members~~ Members of the preliminary review committee.

(f) ~~members~~ Members of a special preliminary review panel.

(g) ~~referees~~ Referees.

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

(i) ~~members~~ Members of the board of administrative oversight may not take part in a matter in which they are a complaining person, grievant or respondent or in which their own

~~interests outside of their official duties under SCR chapters 21 and 22 reasonably may be perceived to impair their impartiality or when a judge similarly situated would be disqualified under Wis. Stat. § 757.19 (1997-98) or required to recuse himself or herself under SCR 60.04(4).~~

SECTION 9. 21.14 (2) of the Supreme Court Rules is amended to read:

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

SECTION 10. 21.15 (5) of the Supreme Court Rules is created to read:

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

lawyer regulation and clerk of the supreme court of being found guilty or his or her conviction is misconduct.

SECTION 11. 21.19 of the Supreme Court Rules is amended to read:

21.19 Privileges, Immunity. Communications with the director ~~or~~, staff of the office of lawyer regulation, a district committee, a member of a special investigative panel 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 ~~chapter~~ ch. 22 are privileged, ~~and no.~~ No lawsuit predicated on ~~those~~ these communications may be instituted against any grievant or witness. The director, staff of the office of lawyer regulation, members of a district committee, ~~members of a special investigative panel investigators,~~ retained counsel, members of the preliminary review committee, members of a special preliminary review panel, referees, ~~and~~ members of the board of administrative oversight, and 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 12. 21.21 of the Supreme Court Rules is amended to read:

21.21 Cost of lawyer regulation system. The cost of the office of lawyer regulation, the district committees, the

preliminary review committee, all matters relating to investigation and prosecution of possible attorney misconduct and medical incapacity, reinstatement investigations and hearings, and the board of administrative oversight shall be paid from the appropriation provided in ~~Wis. Stat. § 20.680 (3) (h) (1997-98)~~ s. 20.680 (3) (h), 1997 stats.

SECTION 13. 22.02 (4) of the Supreme Court Rules is amended to read:

22.02 **(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 ~~to the director within 90 days after being notified.~~ 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.

SECTION 14. 22.02 (6) (a) of the Supreme Court Rules is amended to read:

22.02 **(6)** (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.

SECTION 15. 22.03 (4) of the Supreme Court Rules is amended to read:

22.03 **(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 ~~wilful~~ 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.

SECTION 16. 22.03 (8) of the Supreme Court Rules is amended to read:

22.03 **(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.

SECTION 17. 22.04 (1) of the Supreme Court Rules is amended to read:

22.04 **(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 ~~has the power to~~ may subpoena and compel the production of documents specified in SCR 22.03(7) and 22.42.

SECTION 18. 22.04 (2) of the Supreme Court Rules is amended to read:

22.04 **(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.

SECTION 19. 22.05 (2) of the Supreme Court Rules is amended to read:

22.05 **(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 to the director within 90 days after being notified. 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.

SECTION 20. 22.05 (3) of the Supreme Court Rules is amended to read:

22.05 (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 director chairperson of the preliminary review committee shall notify the grievant and the respondent in writing of the panel's decision.

SECTION 21. 22.08 (1) (a) of the Supreme Court Rules is amended to read:

22.08 (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 the same panel within a reasonable time after the panel's determination. The director shall notify the respondent and the grievant of the decision to dismiss the matter or continue the investigation.

SECTION 22. 22.08 (1) (c) of the Supreme Court Rules is amended to read:

22.08 (1) (c) The chairperson of the committee shall notify the grievant in writing that the grievant may obtain review by a referee of the chairperson's dismissal of a matter by ~~filing~~ submitting to the director a written request ~~with the director~~ within 90 days after being notified of the dismissal. 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 by the director 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 director for further investigation is final, and there shall be no review of the referee's decision.

SECTION 23. 22.09 (2) of the Supreme Court Rules is amended to read:

22.09 **(2)** The director shall ~~submit the agreement to a referee selected by the~~ 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, and appointed by the. 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—and. 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.

SECTION 24. 22.09 (4) of the Supreme Court Rules is amended to read:

22.09 **(4)** If the referee ~~does~~ 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. The referee shall, in those cases, inform the director, the grievant, and the respondent in writing, and the stating the basis and reasons for disapproval. The director shall then proceed in the matter as the director may consider appropriate.

SECTION 25. 22.13 (3) of the Supreme Court Rules is amended to read:

22.13 **(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.

SECTION 26. 22.16 (4) of the Supreme Court Rules is renumbered 22.16 (4) (a) and amended to read:

22.16 (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.

(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, and. 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 a determination of the respondent's capacity to continue to practice law is made in a medical incapacity proceeding 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.

SECTION 27. 22.16 (4) (b) of the Supreme Court Rules is created to read:

(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.

SECTION 28. 22.16 (4) (c) of the Supreme Court Rules is created to read:

(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.

SECTION 29. 22.19 (3) of the Supreme Court Rules is amended to read:

22.19 **(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. The 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.

SECTION 30. 22.19 (4) of the Supreme Court Rules is amended to read:

22.19 **(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. The 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 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.

SECTION 31. 22.21 (1) of the Supreme Court Rules is amended to read:

22.21 **(1)** The supreme court, on its own motion ~~or~~, 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.

SECTION 32. 22.21 (2) of the Supreme Court Rules is amended to read:

22.21 **(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.

SECTION 33. 22.23 (1) of the Supreme Court Rules is renumbered 22.23 (1) (a) and amended to read:

22.23 **(1)** (a) With the exception of the supreme court's disposition of a private reprimand or dismissal of a proceeding,

The 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.

SECTION 34. 22.24 (1) of the Supreme Court Rules is amended to read:

22.24 **(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 in which it imposes discipline 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.

SECTION 35. 22.25 (1) of the Supreme Court Rules is amended to read:

22.25 **(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 ~~referred~~ assigned by the director for investigation to a special ~~investigative panel investigator~~ investigator ~~composed of six lawyers appointed by the.~~ 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. ~~A matter referred by the director shall be assigned to a member of the special investigative panel in rotation~~ 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.

SECTION 36. 22.25 (3) of the Supreme Court Rules is amended to read:

22.25 **(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 ~~report~~ send the matter request for review to the special preliminary review panel consisting of ~~four~~ 4 lawyers and ~~two~~ 3 nonlawyers appointed by the supreme court and having a quorum of ~~five~~ 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 investigator ~~preliminary review panel~~ shall ~~close~~ 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.

SECTION 37. 22.25 (4) of the Supreme Court Rules is renumbered 22.25 (4) (intro.) and amended to read:

22.25 **(4)** (intro.) 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 ~~may dismiss the matter or~~ 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.

SECTION 38. 22.25 (6) (a) of the Supreme Court Rules is amended to read:

22.25 **(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.

SECTION 39. 22.25 (6) (c) of the Supreme Court Rules is amended to read:

22.25 **(6)** (c) The special preliminary review panel shall notify the grievant in writing that the grievant may obtain review ~~of the panel's dismissal of a matter~~ by a referee of the

panel's dismissal 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 by filing a written request with the director within 90 days after being notified of the dismissal. 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.

SECTION 40. 22.25 (7) of the Supreme Court Rules is amended to read:

22.25 **(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.

SECTION 41. 22.28 (1) of the Supreme Court Rules is renumbered 22.28 (1) (intro.) and amended to read:

22.28 **(1)** An attorney suspended from the practice of law for nonpayment of state bar membership dues or failure to comply with ~~continuing legal education requirements~~ or the trust account certification requirement ~~under SCR 20:1.15(g)~~ or continuing legal education requirements shall be reinstated ~~pursuant to~~ may seek reinstatement under the ~~rules governing suspension.~~ following rules, as applicable:

SECTION 42. 22.28 (1) (a), (b), (c), (d), and (e) of the Supreme Court Rules are created to read:

22.28 **(1)** (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 (2).

(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).

SECTION 43. 22.29 (3) of the Supreme Court Rules is amended to read:

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

SECTION 44. 22.29 (3m) of the Supreme Court Rules is created to read:

22.29 **(3m)** The petitioner shall file 9 copies of a petition for reinstatement.

SECTION 45. 22.30 (1) of the Supreme Court Rules is amended to read:

22.30 **(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.

SECTION 46. 22.30 (2) of the Supreme Court Rules is amended to read:

22.30 **(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.

SECTION 47. 22.30 (2m) of the Supreme Court Rules is created to read:

22.30 **(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.

SECTION 48. 22.31 (1) of the Supreme Court Rules is renumbered 22.31 (1) (intro.) and amended to read:

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

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

(b) ~~that the petitioner's~~ 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, ~~and that the petitioner.~~

(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.

SECTION 49. 22.31 (1) (c) of the Supreme Court Rules is created to read:

22.31 **(1)** (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.

SECTION 50. 22.34 (8) of the Supreme Court Rules is amended to read:

22.34 **(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.

SECTION 51. 22.34 (10) of the Supreme Court Rules is amended to read:

22.34 **(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.

SECTION 52. 22.34 (11) of the Supreme Court Rules is renumbered 22.34 (11) (a) (intro.) and amended to read:

22.34 **(11)** (a) An attorney who is the subject of an investigation or petition for possible medical incapacity may request the ~~revocation of or~~ 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 ~~revocation or~~ suspension shall be filed in the supreme court and include the director's summary of the medical incapacity allegations being investigated. The 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 ~~revocation or~~ suspension shall be filed in the supreme court and served on the director and ~~on~~ the referee to whom the matter is assigned. The 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.

SECTION 53. 22.34 (14) of the Supreme Court Rules is renumbered 22.341 (1) and amended to read:

22.341 **(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.

(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.

SECTION 54. 22.34 (15) of the Supreme Court Rules is renumbered 22.341 (2).

SECTION 55. 22.34 (15m) of the Supreme Court Rules is created to read:

22.34 **(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.

SECTION 56. 22.36 (5) of the Supreme Court Rules is amended to read:

22.36 **(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.

SECTION 57. 22.39 of the Supreme Court Rules is amended to read:

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, the discipline different from that imposed in another jurisdiction, the proponent has the burden of proof.

SECTION 58. 22.40 (1) of the Supreme Court Rules is amended to read:

22.40 **(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.

SECTION 59. 22.42 (1) of the Supreme Court Rules is amended to read:

22.42 (1) In any matter under investigation, the director ~~or~~, 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.

SECTION 60. 22.42 (2) of the Supreme Court Rules is amended to read:

22.42 (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 issuance of subpoenas under this rule shall be governed by ~~Wis. Stat. chapter 885 (1997-98)~~ ch. 885, 1997 stats., except as otherwise provided in this chapter.

SECTION 61. 31.11 (1) of the Supreme Court Rules is amended to read:

31.11 (1) Suspension of less than 3 consecutive years.
(a) A lawyer ~~suspended~~ whose suspension for noncompliance under SCR 31.10(1) has been for a period of less than 3 consecutive years may file a petition with the board for reinstatement to

membership in the state bar. ~~The petition for reinstatement shall be served on the board and shall state in detail the manner in which the lawyer has complied with all requirements under this chapter. Only verified attendance at sufficient hours of approved continuing legal education activities for the period of suspension shall be deemed to be full compliance with the attendance requirements of this chapter.~~ Payment in the amount of \$100 and any applicable late fee shall accompany the petition.

SECTION 62. 31.11 (1) (c) of the Supreme Court Rules is amended to read:

31.11 (1) (c) If the board denies a petition for reinstatement ~~is denied,~~ the board shall serve a notice of denial ~~shall be served~~ on the lawyer. After denial, a hearing shall be held by the board only upon written petition of the lawyer made within 30 days of service of the notice of denial, which petition for hearing shall be served on the board. The board shall conduct the hearing within 60 days after service of the petition for hearing and shall make and serve its findings and recommendations on the lawyer within 60 days after the close of the hearing, and, if adverse to the lawyer, shall notify the supreme court of its action. If reinstatement is denied, the findings and recommendations of the board shall be reviewed by the supreme court only upon written petition by the lawyer filed within 30 days of the date of the action of the board.

SECTION 63. 31.11 (2) of the Supreme Court Rules is renumbered 31.11 (4) and amended to read:

31.11 (4) Disciplinary suspension. A lawyer suspended as a result of disciplinary action following referral under SCR 31.10(2) may petition for reinstatement under SCR 22.28.

SECTION 64. 31.11 (1m) of the Supreme Court Rules is created to read:

31.11 (1m) Suspension of 3 or more consecutive years. (a) A lawyer whose suspension has been for a period of 3 or more consecutive years may file a petition for reinstatement with the supreme court and serve a copy on the board and the office of lawyer regulation. Separate payments in the amount of \$200 each shall be made to the board of bar examiners and the office of lawyer regulation shall accompany the petition.

(b) Within 90 days after service of the petition, the board shall make a determination regarding compliance and file its finding with the supreme court.

(c) Within 90 days after service of the petition, the director of the office of lawyer regulation shall investigate the eligibility of the petitioner for reinstatement and file a response with the supreme court in support of or opposition to the petition.

SECTION 65. 31.11 (3) of the Supreme Court Rules is created to read:

31.11 (3) Petition for reinstatement. The petition for reinstatement shall state in detail the manner in which the lawyer has complied with all requirements under this chapter. Only verified attendance at sufficient hours of approved continuing legal education activities for the period of

suspension shall be considered full compliance with the attendance requirements of this chapter.

SECTION 66. 60.05 (8) (b) of the Supreme Court Rules is amended* to read:

60.05 (8) (b) Financial reports. Except as provided in SCR 60.07, a judge shall file with the ethics board a timely financial report as required by section 19.43 of the statutes. The report shall also be filed by commissioners of the supreme court, staff attorneys of the court of appeals, and the director of state courts, ~~members of the board of administrative oversight and preliminary review committees, and members of the board of bar examiners.~~

SECTION 67. 62.01 of the Supreme Court Rules is amended to read:

62.01 Scope. The uniform standards of courtroom courtesy and decorum in SCR 62.02, adopted to enhance the administration of justice by promoting good manners and civility among all who participate in the administration of justice in Wisconsin this state, are applicable to judges, court commissioners, lawyers, court personnel, and the public in all Wisconsin courts. Notwithstanding SCR 20:8.4 (f), the standards under SCR 62.02 are not enforceable by the office of lawyer regulation. Conduct by a lawyer that violates ~~chapter~~ SCR ch. 20 ~~of the supreme court rules~~

* Chief Justice Abrahamson, Justice Bradley, and Justice Crooks dissent to the amendment of SCR 60.05 (8) (b).

or SCR 40.15 is subject to the authority of the office of lawyer regulation.

IT IS ORDERED that the amendment of these Supreme Court Rules shall be effective April 1, 2002, with the exception of the creation of SCR 21.15 (5), which shall be effective July 1, 2002. The amendment of SCR 60.05 (8) (b) shall be effective April 1, 2002 and apply to the 2001 calendar year.

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

Dated at Madison, Wisconsin, this 23rd day of January, 2002.

BY THE COURT:

Cornelia G. Clark
Clerk of Supreme Court