

In the Matter of the Petition
For Establishment of Standards
And Procedures for Permanent
Revocation

TO: Chief Justice Shirley S. Abrahamson
Justice Ann Walsh Bradley
Justice N. Patrick Crooks
Justice David T. Prosser, Jr.
Justice Patience D. Roggensack
Justice Annette Kingsland Ziegler
Justice Michael J. Gableman

Filed with the Clerk of Court David Schanker
Clerk of Supreme Court
110 E. Main Street
Suite 215
Madison, WI 53703

The Board of Administrative Oversight and Preliminary Review Committee hereby petition the Supreme Court of Wisconsin for an order establishing standards and procedures for permanent revocation of lawyer licenses in cases where the seriousness of the lawyer's misconduct and significance of the public interest require.

Petitioners specifically request that the Supreme Court amend Supreme Court Rules 21.16, 22.19, and 22.29 in the manner provided by Appendix A.

Petitioners submit Appendix A (text of proposed rule amendments), Supporting Memorandum, and Cover Sheet in support of this request.

Respectfully submitted this ____ day of _____, 2010.

Steven J. Koszarek
Chairperson
Board of Administrative
Oversight

Edward A. Hannan
Chairperson
Preliminary Review Committee
State Bar No. 1015671

APPENDIX A

(In the Matter of the Petition For Establishment of Standards And Procedures for Permanent Revocation)

SCR 21.16 Discipline

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

(a) Revocation of license to practice law. The supreme court, in any order or judgment in which a lawyer's license is revoked, retains the discretion to permanently revoke the lawyer's license and permanently prohibit any such lawyer's license from being reinstated. Considerations pertinent to imposing the sanction of permanent revocation without right of reinstatement include, but are not limited to, one or more of the following:

(i) conviction of a serious crime as defined in SCR 22.20(2); or

(ii) a pattern of misconduct evincing:

1. disregard for the trust and confidence fundamental to the attorney-client relationship; or
2. flagrant disregard for the Rules of Professional Conduct; or
3. lack of cooperation in and contempt for the disciplinary process; or
4. neglect of client matters demonstrating the lawyer's lack of fitness to continue the practice of law; or
5. intentional corruption of the judicial process and/or the administration of government; or
6. engaging in the unauthorized practice of law during the period of time in which the lawyer is suspended from the practice of law or revoked; or

(iii) prior misconduct, and the nature and duration of prior misconduct.

(b) Suspension of license to practice law.

(c) Public or private reprimand.

(d) Conditions on the continued practice of law.

(e) Monetary payment.

(em) Restitution, as provided under sub. (2m).

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. The petition shall state whether the revocation is with or without right of reinstatement.

(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 22.29 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.

(2m) A lawyer who has been revoked without right of reinstatement may not petition for reinstatement.

(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.