

Attorney Colleen D. Ball
714 Honey Creek Parkway
Wauwatosa, WI 53213

August 28, 2015

Wisconsin Supreme Court
Attention: Commissioner Julie Rich
P.O. Box 1688
Madison, WI 53701

Re: Comment regarding Supreme Court Petition 15-01

I support Petition 15-01, which calls for periodic review of Wisconsin's lawyer regulation system, or similarly broad reforms. I write on my own behalf, not on behalf of any organization. My comments are informed by my experiences as an OLR district committee investigator for 8 years and as an attorney for 24 years.

First, I would like to stress that every OLR representative with whom I have communicated over the years—intake staff, investigators, litigators, and the director—has displayed professionalism, responded promptly, and offered thoughtful advice to me. Nevertheless, I believe that some sort of broad, objective review of the procedures and practices of Wisconsin's lawyer regulation system is necessary in order to protect the public from harm. My recent experience on a district committee shows why minor edits to the existing SCRs are not enough.

Specifically, OLR referred multiple grievances against one attorney to our district committee at a point when federal investigations and civil lawsuits against the attorney were already underway. The sprawling litigation made it impossible for the committee chair to find enough attorneys who did not have conflicts of interest to serve as investigators, so the matters proceeded with just two. The investigations did not go smoothly because the issues proved to be complex and because the lawyer/respondent engaged in stonewalling and misrepresentations.

Part way through the investigation, a state agency revoked one of the lawyer's professional licenses, yet the lawyer remained in "good standing" with the Wisconsin bar and continued to practice law. By this point, the investigation revealed that the attorney had set up a business entity aimed at taking advantage of vulnerable people. The committee investigators asked if OLR could take preemptive action. They were directed to finish their investigations, so they did. The district committee urged immediate suspension, and ultimately revocation, of the lawyer's license.

OLR filed a complaint against the attorney, but the matter did not proceed with any urgency. Seven months after the district committee recommended immediate

suspension, a federal grand jury indicted the lawyer on dozens of counts of fraud. Yet still another six months passed before the supreme court (based on the lawyer's consent) revoked the lawyer's law license. By then, dozens of additional grievances had been filed. It was difficult to understand why it took Wisconsin's lawyer regulation system so long to reach this result.

This experience made me wonder why OLR referred complex matters being investigated criminally, litigated civilly, and reported widely in the press, to a volunteer district committee rather than addressing them quickly in house. It also made me wonder why, when it was publicly known that the lawyer's other professional license had been revoked for fraud and the lawyer had been federally indicted for fraud, no one invoked SCR 22.21, which authorizes an immediate temporary suspension of the lawyer's license in order to stop ongoing harm to the public.¹

There may be good answers to these questions, but they were not (and are not) apparent to the committee investigators or to the people who depend upon our lawyer regulation system for protection. If OLR is so understaffed that it cannot take on Wisconsin's most egregious cases of attorney misconduct, then the staffing problem needs to be addressed. If OLR must investigate and resolve cases on a "first in, first out" basis, then that procedure should be changed so that it may give priority to alarming cases when they arise. If SCR 22.21 is not suitable for its stated purpose, then it should be reviewed and amended. If there is some other bottleneck in the system, then it must be identified and fixed. Whatever the cause(s), Wisconsin's existing lawyer regulation system malfunctioned in this case, and many people suffered as a result.

Petition 14-01, which seeks to give OLR discretion to resolve de minimus violations expeditiously, does not address and cannot correct the kind of system failure that occurred here. Petition 15-01 offers a big-picture solution now and in the future. However, there may be other ways to address these problems. I simply wish to stress that the public deserves protection. I urge the supreme court to undertake comprehensive review and reform of Wisconsin's lawyer regulation system in order to prevent this situation from occurring again.

Thank you very much for the opportunity to comment on this matter.

Sincerely,

Colleen D. Ball

¹ SCR 22.21 provides that the supreme court on its own motion, or on the motion of the director of OLR, "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."