

Memorandum

SUPREME COURT OF WISCONSIN
OFFICE OF LAWYER REGULATION
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DATE: January 15, 2016

TO: Clerk of Supreme Court
ATTN: Deputy Clerk - Rules

FROM: Keith L. Sellen, Director, Office of Lawyer Regulation

SUBJECT: Rules Petition 15-04

I write to comment on Rules Petition 15-04, Petition to Modify SCR 20:1.9(c).

The petition proposes amendments to SCR 20:1.9(c)(1) and (2). Subparagraph (c)(1) proposes the statement “Generally known’ information includes information that is publicly available or has been disclosed in a public forum.” Subparagraph (c)(2) proposes the statement “Information that is ‘generally known’ has already been revealed.”

Currently, information is not generally known simply because it was in a public record or previously revealed [*Disciplinary Proceedings Against Harman*, 2001 WI 71]. The public interest does not require amendment of SCR 20:1.9(c). Amendment may be harmful to the interests of former clients, as in the *Harman* case.

The current rule does not conflict with SCR 20:8.3. The exception in subparagraph (c) resolves the conflict, “[i]f the information revealing misconduct . . . is confidential under SCR 20:1.6, the lawyer shall consult with the client about the matter and abide by the client’s wishes to the extent required by SCR 20:1.6.”

The current rule also does not conflict with SCR 20:4.1. ABA Comment 1 to the rule provides guidance that helps resolve this conflict. In addition, the exceptions in SCR 20:1.6(b) and(c) require or permit a lawyer to disclose information when necessary to prevent a fraud or injury to another.

The current rule promotes and protects candor, confidence, and trust in the attorney-client relationship. Amending the rule as proposed would permit use and disclosure of information to the detriment of former clients, causing harm that would not necessarily occur simply because the information was already in a public record or previously revealed.