
**In the matter of amending Supreme Court Rules pertaining to
reinstatement of a license to practice law in attorney
disciplinary proceedings**

PETITION 19-__

**PETITION OF the OLR Process Review Committee's Subcommittee on Reinstatement
FOR AN ORDER REPEALING AND RECREATING Supreme Court Rule 22.30,
AMENDING Supreme Court Rules 10.03 (6m) and (7), 22.12(1), 22.33, and 31.11 (1m) and
(4), CREATING Supreme Court Rule 22.29 (4x) and 22.305, and REPEALING Supreme
Court Rule 22.31.**

For the reasons set forth in the accompanying supporting memorandum, the OLR Process Review Committee's Subcommittee on Reinstatement respectfully petitions the Supreme Court to amend certain Supreme Court Rule affecting reinstatement of a license to practice law in attorney disciplinary proceedings.

PETITION

The OLR Process Review Committee's Subcommittee on Reinstatement respectfully requests that the Supreme Court adopt the following rule:

Section 1. SCR 10.03(6m) is amended to insert the following comment after that subsection:

Comment

Costs regarding the petition for reinstatement under subsection (6m)(b) may be assessed against the petitioner, as provided in SCR 22.24.

Section 2. SCR 10.03(7) is amended to insert the following comment after that subsection:

Comment

Costs regarding the petition for readmission under subsection (7)(b) may be assessed against the petitioner, as provided in SCR 22.24.

Section 3. SCR 22.12(1) is amended to read:

22.12(1) The director may file with the complaint a stipulation of the director and the respondent to the facts, conclusions of law regarding misconduct, and discipline to be imposed, together with a memorandum in support of the stipulation. The respondent may file a response to the Director's memorandum within 14 days of the date of filing of the stipulation. The supreme court may consider the complaint and stipulation without the appointment of a referee, in which case

the supreme court may approve the stipulation, reject the stipulation, or direct the parties to consider specific modifications to the stipulation.

Section 4. SCR 22.29(4x), and the following comment to be inserted after the subsection, are created to read:

22.29(4x) At the time that the petitioner serves a copy of the petition for reinstatement on the director, the petitioner shall also submit to the director a completed reinstatement questionnaire.

COMMENT

A blank copy of the reinstatement questionnaire may be obtained from the office of lawyer regulation. The questionnaire is used by the office of lawyer regulation to assist it in its investigation. The questionnaire is not to be filed with the court.

Section 5. SCR 22.30 is repealed and recreated to read:

22.30 (1) Promptly following the filing of the petition for reinstatement, the director shall publish a notice on the website of the office of lawyer regulation, in a newspaper of general circulation in all counties in which the petitioner maintained an office for the practice of law prior to suspension or revocation, in a newspaper of general circulation in the county of the petitioner's residence, and in an official publication of the state bar of Wisconsin.

(2) The notice shall contain all of the following:

(a) The name of the petitioner, the date on which the petition for reinstatement was filed, the case number assigned to the petition, a brief statement of the nature and date of suspension or revocation, and the matters required to be proved for reinstatement.

(b) The office of lawyer regulation will be investigating the eligibility of the petitioner for reinstatement.

(c) This notice is the only published notice regarding the petition for reinstatement.

(d) Interested parties may submit written comments regarding the petitioner and the reinstatement petition, the address (physical and electronic) to which written comments may be submitted, and the deadline for submitting written comments, which shall be 60 days following the date on which the petition for reinstatement was filed. All formal written comments regarding the petition shall be forwarded to a referee, if any, and to the supreme court.

(e) Individuals may request that notice of any reinstatement hearing regarding the petition be sent to an address they provide to the office of lawyer regulation.

(f) Only individuals who provide their address and ask to have notice of a reinstatement hearing will have a notice of a reinstatement hearing sent to them at the address provided.

(g) The office of lawyer regulation may contact individuals who submit written comments to obtain further information.

(h) Upon completion of the investigation, the director will file with the court a response to the petition stating either that the director does not oppose reinstatement and will negotiate a stipulation with the petition, which will be considered by the supreme court without the appointment of a referee or that the director opposes reinstatement and a referee will be appointed and a reinstatement hearing take place.

(i) Information regarding the status of the petition and any hearing will be available on the website of the office of lawyer regulation.

(3) Within 75 days after the filing of the petition, the board of bar examiners shall determine the attendance and reporting requirements of the petitioner, as required by SCR 31.06, and file with the court a report regarding the petitioner's compliance. Upon motion of the board of bar examiners or the petitioner for good cause shown, the court may grant the board of bar examiners an extension of time to complete the assessment of compliance and file the report regarding compliance. Failure of the petitioner to prove compliance within the time allowed, including any extension thereof, may subject the petition to immediate dismissal.

(4) Within 75 days after the filing of the petition, the director shall investigate the eligibility of the petitioner for reinstatement and shall file with the court a response to the petition stating whether the petitioner has demonstrated to the director satisfaction of all of the criteria for reinstatement or the director opposes the petition. Upon motion of the director or the petitioner for good cause shown, the court may grant the director an extension of time to complete the investigation and file the response to the petition.

(5)(a) If the director's response states that the petitioner has demonstrated to the director satisfaction of all of the criteria for reinstatement, the director and the petitioner shall prepare and file a stipulation containing all facts and conclusions of law necessary to satisfy the standards for reinstatement, identifying all conditions to be imposed on the petitioner or the petitioner's practice of law following reinstatement, and requesting that the court reinstate the petitioner's license to practice law in this state. The director shall also file a memorandum in support of the stipulation, which shall include a discussion of any material issue potentially adverse to the petition and an explanation as to why the director concludes that the issue does not prevent reinstatement. At the time of filing the stipulation and memorandum, the director shall also file with the court all formal written comments that have been received regarding the petition. The petitioner may file a response to the director's memorandum within 14 days of the date of filing of the stipulation.

(b) The supreme court shall consider the petition and stipulation without the appointment of a referee. The court may approve the stipulation, adopt the stipulated facts and conclusions of law, and reinstate the petitioner's license to practice law in Wisconsin; the court may reject the stipulation and refer the petition to a referee for a hearing and consideration under sub. (5) below as if no stipulation had been filed; or the court may direct the parties to consider modifications to the stipulation.

(c) If the supreme court directs the parties to consider specific modifications to the stipulation, the parties may, within 20 days of the date of the order, file a revised stipulation, in which case the supreme court may approve the revised stipulation, adopt the stipulated facts and conclusions of law, and reinstate the petitioner's license to practice law in Wisconsin; or the court may reject the stipulation and refer the petition to a referee for a hearing and consideration under sub. (5) below as if no stipulation had been filed. If the parties do not file a revised stipulation within 20 days of the date of the order or if the parties so request in writing, a referee shall be appointed and the petition shall be referred to the referee for a hearing and consideration under sub. (5) below as if no stipulation had been filed.

(d) A stipulation rejected by the supreme court has no evidentiary value and is without prejudice to the petitioner's prosecution of the petition for reinstatement or the director's response to the petition.

(6)(a) If the director opposes the petition for reinstatement, the clerk of the supreme court shall select a referee from the panel provided in SCR 21.08, based on availability and geographical proximity to the petitioner's place of residence, and the chief justice or, in his or her absence, the chief justice's delegee shall appoint the referee to conduct a hearing and prepare a report on the petition for reinstatement.

(b) The referee shall have the powers of a judge trying a civil action and shall conduct the proceedings regarding the petition pursuant to the rules of civil procedure, except where these rules provide a different procedure.

(c) 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.

(d) Following the appointment of a referee, the director shall transfer to the referee all formal written comments regarding or in response to the petition. The director shall also provide the referee with a list of all individuals who requested notice of the hearing on the petition.

(e) The referee shall establish a schedule for proceedings and a hearing on the petition, which hearing shall be held at the earliest feasible date.

(f) At least 20 days prior to the hearing, the director shall provide written notice of the date, time, and location of the hearing to all individuals who requested notice of the hearing on the petition. If the hearing is rescheduled, the director shall provide written notice of the date, time, and location of the rescheduled hearing to all individuals who requested notice of the hearing on the petition. The director shall advise the referee that the director has complied with this notice requirement.

(g) The reinstatement hearing shall be public.

(h) The referee shall appoint a person to act as the court reporter to make a verbatim record of the proceedings as provided in SCR 71.01 to 71.03.

(i) The petitioner and the director or a person designated by the director shall appear at the hearing. The petitioner may be represented by counsel.

(j) The referee shall conduct the hearing as the trial of a civil action to the court. The hearing shall be conducted pursuant to the rules of civil procedure, but the rules of evidence shall not apply, and the referee may consider any relevant information presented. Interested persons may present information in support of or in opposition to reinstatement.

Section 6. SCR 22.31 is repealed.

Section 7. SCR 22.305 is created to read:

22.305 Standard for Reinstatement. At all times relevant to the petition, the petitioner has the burden of demonstrating, by clear, satisfactory, and convincing evidence, all of the following:

(1) That he or she has the moral character to practice law in Wisconsin.

(2) 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.

(3) 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.

(4) 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 8. SCR 22.33 is amended to insert the following comment after that rule:

COMMENT

Costs regarding the petition for reinstatement may be assessed against the petitioner, as provided in SCR 22.24.

Section 9. SCR 31.11(1m) is amended to insert the following comment after that subsection:

COMMENT

Costs regarding the petition for reinstatement under subsection (1m) may be assessed against the petitioner, as provided in SCR 22.24.

Section 10. SCR 31.11(4) is amended to insert the following comment after that subsection:

COMMENT

Costs regarding the petition for reinstatement under subsection (4) may be assessed against the petitioner, as provided in SCR 22.24.

Respectfully submitted this ____ day of _____, 2019.

Hon. Gerald P. Ptacek, Chair, OLR Procedure Review Committee

Jacquelynn B. Rothstein, Chair, Reinstatement Subcommittee