
In the matter of amending Supreme Court Rules pertaining to confidentiality in attorney disciplinary proceedings

PETITION 19-__

PETITION OF the OLR Process Review Committee's Subcommittee on Confidentiality FOR AN ORDER AMENDING Supreme Court Rules 21.18 (1), 21.19, 22.21 (2) and (3), 22.34 (12), and 22.40 (1), RENUMBERING AND AMENDING Supreme Court Rule 22.001 (6), AND CREATING Supreme Court Rules 222.001 (6) (b), 22.03 (2g) and (2r), 22.03 (5) (c), 2.21 (2m), 22.34 (12m), and 22.40 (1g), (1m), and (8).

For the reasons set forth in the accompanying supporting memorandum, the OLR Process Review Committee's Subcommittee on Confidentiality respectfully petitions the Supreme Court to amend certain Supreme Court Rule affecting confidentiality in attorney disciplinary proceedings.

PETITION

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

Section 1. SCR 21.18 (1) is amended to read:

21.18 (1) Information, an inquiry, or a grievance concerning the conduct of an attorney shall be communicated to the director within ~~10~~ six years after the person communicating the information, inquiry or grievance knew or reasonably should have known of the conduct, whichever is ~~later~~ earlier, or shall be barred from proceedings under this chapter and SCR chapter 22.

Section 2. Supreme Court Rule 21.18 (2) is amended to read:

SCR 21.18 (2) The time during which a person who knew or should have known of the attorney's conduct is under a disability as provided in Wis. Stat. § 893.16 ~~(1997-98)~~ and the time during which the attorney acted to conceal the conduct from or mislead the person who knew or should have known of the conduct regarding the conduct are not part of the time specified in sub. (1).

Section 3. SCR 21.19 is amended to read:

21.19 Communications with the director, staff of the office of lawyer regulation, a district committee, a special 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 ch. 22 are privileged, except as provided under SCR 22.21, SCR 22.34, SCR 22.40 and SCR 22.03. No lawsuit predicated on ~~these communications~~ any privilege or non-privileged communications referenced in this Section

may be instituted against any grievant or witness. The director, staff of the office of lawyer regulation, members of a district committee, special investigators, retained counsel, members of the preliminary review committee, members of a special preliminary review panel, referees, members of the board of administrative oversight, and persons 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 4. SCR 22.001 (6) is renumbered SCR 22.001 (6)(a) and amended to read:

22.001 (6) (a) "Grievant" means the person who presents a grievance, ~~except that~~. Except as provided in par. (b), a judicial officer or a district committee who communicates a matter to the office of lawyer regulation in the course of official duties is not a grievant.

Section 5. SCR 22.001 (6) (b) is created to read:

22.001 (6) (b) A judicial officer who communicates a matter to the office of lawyer regulation may, at any time during the course of proceedings related to the grievance, elect to be a designated as a grievant.

Section 6. SCR 22.03 (2g) and (2r) are created to read:

22.03(2g) Upon receipt of a notice of investigation, the respondent shall promptly furnish a copy of the notice to the following:

(a) If the respondent practices in a law firm, a person in the law firm having supervisory authority over the respondent or, if no such person exists, any and all law firm partners and shareholders. In this paragraph, "law firm" has the same meaning as in SCR 20:1.0(d).

(b) If at the time of the events referenced in the notice of investigation the respondent practiced law in one or more law firms different from that in which the respondent practices at the time he or she receives the notice of investigation, a person in each such former law firm having supervisory authority over one or more other attorneys or, if no such person exists, at least one firm partner or shareholder. In this paragraph, "law firm" has the same meaning as in SCR 20:1.0(d).

(2r) The office of lawyer regulation may, in its discretion, inform the respondent in writing in the notice of investigation or in an accompanying paper of respondent's obligations under subsection (2g), and may, in its discretion, transmit a copy of the notice of investigation to any of the persons identified in subsections (2g)(a) and (b).

Section 7. SCR 22.03 (5) (c) is created to read:

22.03 (5) (c) The director may, in his or her discretion, provide the respondent a copy of the grievance and of any information supplied by the grievant that is not included in the grievance. In exercising such discretion, the director shall consider:

1. The grievant's interest in privacy.
2. The respondent's interest in being fully informed of the basis for the grievance and of any proceedings taken against him or her pursuant to the grievance.

3. Any effect that supplying or withholding a copy of the grievance and information supplied by the grievant may have upon the public interest.

Section 8. SCR 22.21 (2) 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 Except as provided in sub. (2m) and (3), SCR 22.34 and SCR 22.40, all papers, files, transcripts, communications, and proceedings shall be confidential and shall remain are confidential until the supreme court has issued an order to show cause.

Section 9. SCR 22.21 (2m) is created to read:

22.21 (2m) Following the issuance of the order to show cause under sub. (2), the motion under sub. (1), and the order to show cause are public information, except as follows:

- (a) The name of the special investigator or any person alleging that the attorney committed an act of misconduct.
- (b) Medical information regarding the attorney who is the subject of the order to show cause.
- (c) Financial information regarding the attorney who is the subject of the order to show cause, or of any person alleging the attorney committed an act of misconduct, if the financial information is unrelated to the order to show cause.
- (d) Information that is subject to legal privilege, including the attorney-client privilege, unless such privilege is waived in writing by the person or persons holding such privilege.
- (e) As otherwise expressly provided in this chapter or by law or by order of the supreme court.

Section 10. SCR 22.21 (3) is amended to read:

22.21 (3) *Filing of Complaint.* The director, or a special investigator acting under SCR 22.25, shall file the complaint in the disciplinary proceeding within 4 months of the effective date of the temporary suspension imposed under this section, or shall show cause why the temporary suspension should continue. The respondent attorney may file a response with the supreme court within 10 days of service. The statement of cause to continue the temporary suspension and the attorney's response are public information, subject to the same exceptions set forth in sub. (2m) (a) to (d). Reinstatement under this section shall not terminate any misconduct investigation or disciplinary proceeding pending against the attorney.

Section 11. SCR 22.34 (12) is amended to read:

22.34 (12) All papers, files, transcripts, communications and proceedings shall be confidential and shall remain ~~confidential until the supreme court has issued an order revoking, suspending indefinitely, or imposing conditions on the attorney's license to practice law,~~ except as provided in sub. (12m) and except that acknowledgement that a proceeding is pending and notification to another court before which a similar petition is pending may be made when considered necessary by the director and that any publication the supreme court considers necessary may be made.

Section 12. SCR 22.34 (12m) is created to read:

22.34 (12m) Following the issuance by the supreme court of an order revoking, suspending indefinitely, or imposing conditions on the attorney's license to practice law, the petition and all papers relating to the petition that are filed with the supreme court are public information.

Section 13. SCR 22.40 (1) is amended to read:

22.40 (1) ~~Prior to the filing of a misconduct complaint, medical incapacity petition, or petition for temporary license suspension~~ Except as provided in sub. (1g) through (7) and SCR 22.21(2), all papers, files, transcripts, and communications in any matter relating to an allegation of attorney misconduct 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 14. SCR 22.40 (1g), (1m), and (8) are created to read:

22.40 (1g) Following the issuance by the preliminary review panel of a written Cause to Proceed Determination finding cause to proceed on at least one count of misconduct, the written Cause to Proceed Determination is public information, except as follows:

- (a) The name of the grievant.
- (b) The names of the voting preliminary review committee members, the vote count and other information relating to how each member voted, and information relating to counts or allegations for which cause to proceed was not found.
- (c) Medical information regarding the grievant and the attorney who is the subject of the Cause to Proceed Determination.
- (d) Financial information regarding the grievant and the attorney who is the subject of the Cause to Proceed Determination, if the financial information is unrelated to any allegation of misconduct for which there is Cause to Proceed.
- (e) Information that is subject to legal privilege, including the attorney-client privilege, unless such privilege is waived in writing by the person or persons holding such privilege.
- (f) As otherwise expressly provided in this chapter or by law or by order of the supreme court.

(1m) Following the filing by the director in the supreme court of a complaint alleging at least one count of misconduct, the proceeding, the complaint, and all papers relating to the complaint that are filed with the supreme court are public information, except where expressly provided otherwise in this chapter or by law.

(8) Subsections (1g) and (1m) do not apply to a proceeding under SCR 22.34 where there is no allegation of misconduct against the attorney who is the subject of the proceeding.

Respectfully submitted this ____ day of _____, 2019.

Hon. Gerald Ptacek, Chair, OLR Procedure Review Committee

Joseph Ranney, Chair, Confidentiality Subcommittee