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**In the matter of amending Supreme Court Rules pertaining to  
the reporting conduct to a disciplinary authority**

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**PETITION 19-\_\_**

**PETITION OF the OLR Process Review Committee's FOR AN ORDER AMENDING  
Supreme Court Rules 20:1.8 (3)(h)(3) and 20:8.3**

For the reasons set forth in the accompanying supporting memorandum, the OLR Process Review Committee respectfully petitions the Supreme Court to amend certain Supreme Court Rule affecting reporting attorney conduct to a disciplinary authority.

**PETITION**

The OLR Process Review Committee respectfully requests that the Supreme Court adopt the following rule:

**Section 1. SCR 20:1.8 (3) (h) (3) and the Rule's Wisconsin Comment are amended to read:**

**20:1.8(3) (h) (3)** make an agreement limiting ~~the client's~~ a person's right to report the lawyer's conduct to disciplinary authorities.

**WISCONSIN COMMENT**

This rule differs from the Model Rule in four respects. Paragraph (c) incorporates the decisions in *State v. Collentine*, 39 Wis. 2d 325, 159 N.W.2d 50 (1968), and *State v. Beaudry*, 53 Wis. 2d 148, 191 N.W.2d 842 (1971). Paragraph (f) adds a reference to an attorney retained at government expense and retains the "insurance defense" exception from prior Wisconsin law. But see SCR 20:1.2(e). Paragraph (h) prohibits a lawyer from making an agreement limiting ~~the client's~~ a person's right to report the lawyer's conduct to disciplinary authorities. Paragraph (j)(2) includes language from ABA Comment [19].

**Section 2. SCR 20:8.3 (a) and (b) and the Rule's Wisconsin Comment are amended to read:**

**20:8.3 (a)** A lawyer who ~~knows~~ reasonably believes that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

**(b)** A lawyer who ~~knows~~ reasonably believes that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

## WISCONSIN COMMENT

~~The change from “having knowledge to “who knows” in SCR 20:8.3(a) and (b) reflects the a doption of the language used in the ABA Model Rule. See also SCR 20:1.0(g) defining “knows.” Wisconsin rule differs from the ABA Model Rule in substituting “reasonably believes” for “knows” in (a) and (b). See also SCR 20:1.0( l) defining “reasonable belief.” The requirement under paragraph (c) that the lawyer consult with the client is not expressly included in the Model Rule. A lawyer who consults with a client pursuant to subsection (c) should not discourage a client from consenting to reporting a violation unless the lawyer believes there is a reasonable possibility that it would compromise the attorney-client privilege or otherwise prejudice the client. Lawyers should also be mindful of the obligation not to use the threat of a report as a bargaining chip (see Wisconsin Ethics Opinion E-01-01) and the obligation not to seek to contractually limit a person from reporting professional misconduct. See SCR 20:1.8(h)(3).~~

Respectfully submitted this \_\_\_\_ day of \_\_\_\_\_, 2019.

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Hon. Gerald Ptacek, Chair, OLR Procedure Review Commiittee