

1 In 2016, the Wisconsin Supreme Court established a committee to
2 review the Office of Lawyer Regulation (OLR), entitled the OLR Procedure
3 Review Committee. The Honorable Gerald Ptacek was appointed as the
4 Committee's chair.

5
6 The Committee examined OLR procedures holistically and
7 established its mission to review OLR procedures and structure, and to
8 report to the Wisconsin Supreme Court recommendations that would
9 increase the efficiency, effectiveness, and fairness of the OLR process. On
10 March 13, 2019, the OLR Procedure Review Committee filed nine
11 administrative rule petitions.

12
13 On June 26, 2019, following a June 6, 2019 public hearing and
14 administrative rules conference, the court issued an order granting Rule
15 Petition 19-04 (Referee Training). The court opted to hold Rule Petition
16 19-05 (Referee Authority) in abeyance until further order of the court.

17
18 On September 16, 2019, at an administrative rules conference
19 following a public hearing, the Wisconsin Supreme Court approved, in part,
20 two of the Committee's proposals: Petition 19-06 (Reinstatements) and
21 Petition 19-07 (OLR Confidentiality).

22
23 On October 29, 2019, at an administrative rules conference following
24 a public hearing, the Wisconsin Supreme Court voted to approve, in part,
25 two of the Committee's proposals: Petition 19-08 (OLR Process) and Petition
26 19-09 (Enforcement of Orders). The court voted to deny Petition 19-10
27 (Permanent Revocation).

28
29 On December 9, 2019, at an administrative rules conference following
30 a public hearing, the Wisconsin Supreme Court approved, in part, two of the
31 Committee's proposals: Petition 19-11 (OLR Charging) and Petition 19-12
32 (Reporting Misconduct).

33
34 This document reflects the changes approved by the court to date
35 affecting SCR ch. 22. Pending changes are highlighted.¹ It remains subject
36 to the court's further consideration of the remaining rule petitions and to
37 review any technical correction. When the technical review is complete and
38 the court has approved the final draft, an order will issue with an anticipated
39 effective date of July 1, 2020.

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¹ Blue: 9/16/19 conference; Green: 10/29/19 conference; Pink 12/9/19
conference; Yellow: proposed changes that remain under advisement.

SCR CHAPTER 22

PROCEDURES FOR THE LAWYER REGULATION SYSTEM

SCR 22.001 Definitions.

In SCR chapter 21 and this chapter:

(1) "Attorney" means a person admitted to the practice of law in this state and a person admitted to practice in another jurisdiction who appears before a court or administrative agency in this state or engages in any other activity in this state that constitutes the practice of law.

(2) "Cause to proceed" means a reasonable belief based on a review of an investigative report that an attorney has engaged in misconduct that warrants discipline or has a medical incapacity that may be proved by clear, satisfactory and convincing evidence.

(3) "Costs" means the compensation and necessary expenses of referees, fees and expenses of counsel for the office of lawyer regulation, a reasonable disbursement for the service of process or other papers, amounts actually paid out for certified copies of records in any public office, postage, telephoning, adverse examinations and depositions and copies, expert witness fees, witness fees and expenses, compensation and reasonable expenses of experts and investigators employed on a contractual basis, and any other costs and fees authorized by chapter 814 of the statutes.

(4) "Director" means the director of the office of lawyer regulation provided in SCR 21.03.

(5) "Grievance" means an allegation of possible attorney misconduct or medical incapacity received by the office of lawyer regulation.

(6) "Grievant" means the person who presents a grievance, except that 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.

(7) "Malfeasance" means a violation of the rules provided in SCR chapter 21 and this chapter.

(8) "Medical incapacity" means a physical, mental, emotional, social or behavioral condition that is recognized by experts in medicine or psychology as a principal factor which substantially prevents a person from performing the duties of an attorney to acceptable professional standards.

(9) "Misconduct" means any of the following:

(a) Violation or attempted violation of SCR chapter 20 - rules of professional conduct for attorneys, knowingly assisting or inducing another to do so, or doing so through the acts of another.

(b) Failure to cooperate in the investigation of a grievance.

(c) Engaging in prohibited conduct in respect to an attorney whose license to practice law is suspended or revoked.

(d) Commission of a criminal act that reflects adversely on an attorney's honesty, trustworthiness or fitness as an attorney in other respects.

1 (e) Engaging in conduct involving dishonesty, fraud, deceit or
2 misrepresentation.

3 (f) Stating or implying an ability to influence improperly a government
4 agency or official.

5 (g) Knowingly assisting a judge or judicial officer in conduct that is a
6 violation of applicable rules of judicial conduct or other law.

7 (h) Violation of a statute, supreme court rule, supreme court order or
8 supreme court decision regulating the conduct of lawyers.

9 (j) Violation of the attorney's oath.

10 (9m) "Public member" means an individual who is eligible to vote in the
11 state of Wisconsin, but who is not a member of the state bar of Wisconsin.

12 (10) "Respondent" means an attorney alleged in a grievance or in a
13 complaint to have engaged in misconduct or alleged in a grievance or in a petition
14 to have a medical incapacity.

15 COMMENT

16
17
18 In exercising its discretion, the office of lawyer regulation considers
19 factors such as the de minimus nature of a violation, whether the attorney
20 acknowledges the violation, whether the violation caused harm, whether the
21 attorney has remediated any harm, and whether the violation is part of a pattern of
22 misconduct or is repeated misconduct.

23 ATTORNEY CONDUCT

24 **SCR 22.01 Inquiries and grievances.**

25
26 Any person may make an inquiry or a grievance to the office of lawyer
27 regulation concerning the conduct of an attorney. Inquiries and grievances,
28 except those from incarcerated persons, may be made by telephone. The staff
29 may assist the person making an inquiry or a grievance in clearly stating the
30 inquiry or grievance. If assistance is given, staff may send the person making the
31 inquiry or grievance a written statement, and if it accurately sets forth the inquiry
32 or grievance, the person shall sign it and return it to the office of lawyer
33 regulation.
34

35 **SCR 22.02 Intake.**

36 (1) The staff of the office of lawyer regulation shall receive and evaluate
37 all inquiries and grievances concerning attorney conduct.

38 (2) The staff shall conduct a preliminary evaluation of the inquiry or
39 grievance and may do any of the following:

40 (a) Forward the matter to another agency.

41 (b) Attempt to reconcile the matter between the grievant and the attorney
42 if it is a minor dispute.
43

1 (c) Close the matter if it does not present sufficient information of cause
2 to proceed.

3 (d) Refer the matter to the director with a recommendation that the matter
4 be investigated by ~~staff or~~ diverted, or resolved by a consensual reprimand.²

5 (3) If staff forwards the matter to another agency, it shall provide the
6 grievant the reasons for doing so. The decision of staff is final, and there shall be
7 no review of the decision.

8 (4) The staff shall notify the grievant in writing that the grievant may
9 obtain review by the director of the staff's closure of a matter under sub. (2)(c) by
10 submitting to the director a written request. The request for review must be
11 received by the director within 30 days after the date of the letter notifying the
12 grievant of the closure. The director may, upon a timely request by the grievant
13 for additional time, extend the time for submission of additional information
14 relating to the request for review. If the director affirms the closure, he or she
15 shall provide to the grievant a brief written statement of reasons for affirmation.³
16 The decision of the director affirming the closure or referring the matter to staff
17 for further evaluation is final, and there shall be no review of the director's
18 decision.

19 (5) In the performance of duties under this chapter, staff may not give
20 legal advice.

21 (6) The director shall review each matter referred by staff and do one or
22 more of the following:

23 (a) Close the matter for lack of an allegation of possible misconduct or
24 medical incapacity or lack of sufficient information of cause to proceed. The
25 director shall ~~notify~~ provide to the grievant written notice of the decision to close,
26 accompanied by a brief written statement of reasons for the director's decision.
27 The notice shall inform the grievant in writing⁴ that the grievant may obtain
28 review by a preliminary review panel of the director's closure by submitting a
29 written request to the director. The request for review must be received by the
30 director within 30 days after the date of the letter notifying the grievant of the
31 closure. The director shall send the request for review to the chairperson of the
32 preliminary review committee, who shall assign it to a preliminary review panel.
33 Upon a timely request by the grievant for additional time, the director shall report
34 the request to the chairperson of the preliminary review committee, who may
35 extend the time for submission of additional information relating to the request for
36 review.

² Adopted 10/29/19 (Petition 19-08, Section 4).

³ Adopted 12/9/19 (Petition 19-11, Section 1).

⁴ Adopted 12/9/19 (Petition 19-11, Section 2).

1 (b) Divert the matter to an alternatives to discipline program as provided
2 in SCR 22.10.

3 (c) Commence an investigation when there is sufficient information to
4 support a possible finding of cause to proceed.

5 ~~(d) Resolve the matter with a consensual reprimand as provided by~~
6 ~~SCR 22.09.⁵~~

7 ~~(e) Obtain the respondent's consent to the imposition of a public or private~~
8 ~~reprimand and proceed under SCR 22.09.⁶~~

9
10
11 **SCR 22.03 Investigation.**

12 (1) The director shall investigate any grievance that presents sufficient
13 information to support a possible finding of cause to proceed.

14 (2) Upon commencing an investigation, the director shall notify the
15 respondent of the matter being investigated unless in the opinion of the director
16 the investigation of the matter requires otherwise. The respondent shall fully and
17 fairly disclose all facts and circumstances pertaining to the alleged misconduct
18 within 20 days after being served by ordinary mail a request for a written
19 response. The director may allow additional time to respond. Following receipt
20 of the response, the director may conduct further investigation and may compel
21 the respondent to answer questions, furnish documents, and present any
22 information deemed relevant to the investigation.

23 (3) Staff involved in the investigation process shall include in reports to
24 the director all relevant exculpatory and inculpatory information obtained.

25 ~~(4) If the respondent fails to respond to the request for written response to~~
26 ~~an allegation of misconduct or fails to cooperate in other respects in an~~
27 ~~investigation, the director, or a special investigator acting under SCR 22.25, may~~
28 ~~file a motion with the supreme court requesting that the court order the respondent~~
29 ~~to show cause why his or her license to practice law should not be suspended for~~
30 ~~willful failure to respond or cooperate with the investigation. All papers, files,~~
31 ~~transcripts, communications, and proceedings on the motion shall be confidential~~
32 ~~and shall remain confidential until the supreme court has issued an order to show~~
33 ~~cause. The license of an attorney suspended for willful failure to respond or~~
34 ~~cooperate with an investigation may be reinstated by the supreme court upon a~~
35 ~~showing of cooperation with the investigation and compliance with the terms of~~
36 ~~suspension. The director or the special investigator shall file a response in~~
37 ~~support of or in opposition to the reinstatement within 20 days after the filing of~~

⁵ Adopted 10/29/19 (Petition 19-08, Section 5).

⁶ Created 12/9/19 (Petition 19-11, Section 3).

1 ~~an attorney's request for reinstatement. Upon a showing of good cause, the~~
2 ~~supreme court may extend the time for filing a response.~~⁷
3

4 (4)(a) ~~If respondent fails fully and fairly to disclose all facts and~~
5 ~~circumstances pertaining to the alleged misconduct within the deadline~~
6 ~~established pursuant to par. (2), including any extension granted by the director or~~
7 ~~special investigator, or fails to cooperate in other respects with an investigation,~~
8 ~~the director or special investigator shall notify respondent by personal service that~~
9 ~~respondent's license to practice law will be automatically suspended unless,~~
10 ~~within 20 days after receiving such personal service, respondent:~~

11
12 1. ~~Fully and fairly discloses all facts and circumstances pertaining to the~~
13 ~~alleged misconduct or otherwise cooperates with the investigation, to the~~
14 ~~reasonable satisfaction of the director or special investigator; or,~~

15
16 2. ~~Submits evidence to the director or special investigator demonstrating,~~
17 ~~to the reasonable satisfaction of the director or special investigator, respondent's~~
18 ~~inability to disclose the facts and circumstances or otherwise cooperate with the~~
19 ~~investigation; or,~~

20
21 3. ~~Files a motion with the supreme court showing cause why respondent's~~
22 ~~license to practice should not be suspended for willful failure to respond or~~
23 ~~cooperate with the investigation.~~

24
25 (b) 1. ~~If respondent satisfies the condition of par. (a) 1., the director or~~
26 ~~special investigator shall proceed with the investigation.~~

27
28 2. ~~If the respondent satisfies the condition of par. (a) 2., the director or~~
29 ~~special investigator may establish a new deadline for respondent to disclose fully~~
30 ~~and fairly all facts and circumstances or otherwise cooperate with the~~
31 ~~investigation. If respondent fails to disclose fully and fairly all facts and~~
32 ~~circumstances or otherwise cooperate with the investigation, to the reasonable~~
33 ~~satisfaction of the director or special investigator, before expiration of the~~
34 ~~deadline established pursuant to this par. 2, respondent's license to practice law is~~
35 ~~automatically suspended.~~

36
37 3. ~~If respondent files a motion with the supreme court pursuant to par.~~
38 ~~(a) 3., the supreme court shall act upon respondent's motion, following its own~~
39 ~~procedures. All papers, files, transcripts, communications, and proceedings on the~~

⁷ Repealed and recreated 10/29/19 (Petition 19-08, Section 6).

1 ~~motion are confidential until the supreme court has acted upon the motion.~~⁸

2
3 (c) 1. If the respondent fails to satisfy any of par. (a) 1, 2, or 3, or fails to
4 meet a deadline established pursuant to par. (b) 2., or if the supreme court rejects
5 respondent's motion submitted pursuant to par. (b) 3., respondent's license is
6 suspended and the director shall promptly send notice of the suspension as
7 provided in SCR 22.23. ~~to the clerk of the supreme court, all supreme court~~
8 ~~justices, all courts of appeal and circuit courts, all circuit court commissioners, all~~
9 ~~circuit court clerks, all juvenile court clerks, all registers in probate, the executive~~
10 ~~director of the state bar of Wisconsin, the Wisconsin State Public Defenders'~~
11 ~~Office, and the clerks of the federal districts in Wisconsin.~~⁹

12
13 2. SCR 22.26 (2) applies immediately upon suspension to a respondent
14 whose license to practice law is suspended pursuant to this Rule. If respondent's
15 suspension hereunder extends beyond 30 days, SCR 22.26 in its entirety applies to
16 the respondent beginning on the 31st day.

17
18 (d) 1. Notwithstanding SCR 22.28, if, within 18 months of the date of
19 suspension pursuant to SCR 22.03(4), a respondent whose license was suspended
20 for failure to satisfy a condition of par. (a) 1. to 3., or failure to meet a deadline
21 established pursuant to par. (b) 2., discloses fully and fairly all facts and
22 circumstances pertaining to the alleged misconduct, or otherwise cooperates with
23 the investigation, to the reasonable satisfaction of the director or special
24 investigator, respondent's license to practice law shall be automatically reinstated.
25 Upon reinstatement of a license pursuant to this subsection, the director or special
26 investigator shall send notice of the reinstatement to each person identified in par.
27 (c) 1.

28
29 2. Respondent, following suspension of respondent's license pursuant to
30 paragraph (4) and whose license was not automatically reinstated pursuant to
31 paragraph (d)1. above, may apply for reinstatement pursuant to SCR 22.28(3).¹⁰

⁸ This language will be modified by the court to maintain confidentiality if the court grants the respondent's motion.

⁹ This language will be modified by the court for consistency with SCR 22.23.

¹⁰ Adopted as part of repeal and recreation of the section 10/29/19 (Petition 19-08, Section 6).

1 (5)(a) Except as provided in sub (b), the director shall provide the
2 grievant a copy of the respondent's response to the grievance and the opportunity
3 to comment in writing on the respondent's response.

4 (b) In limited circumstances when good cause is shown, the director may
5 provide the grievant a summary of the respondent's response prepared by the
6 investigator in place of a copy of the response.

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

11 1. The grievant's interest in privacy.

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

15 3. Any effect that supplying or withholding a copy of the grievance and
16 information supplied by the grievant may have upon the public interest.¹¹

17 (6) In the course of the investigation, the respondent's wilful failure to
18 provide relevant information, to answer questions fully, or to furnish documents
19 and the respondent's misrepresentation in a disclosure are misconduct, regardless
20 of the merits of the matters asserted in the grievance.

21 (7) The duty of the respondent to cooperate with the investigation does
22 not affect the respondent's privilege against self-incrimination, but the privilege
23 may be asserted only in respect to matters that may subject the respondent to
24 criminal liability.

25 (8) The director, or a special investigator acting under SCR 22.25, may
26 subpoena the respondent and others and compel any person to produce pertinent
27 books, papers, and documents. The director, or a special investigator acting under
28 SCR 22.25, may obtain expert assistance in the course of an investigation.

29 **SCR 22.04 Referral to district committee.**

30 (1) The director may refer a matter to a district committee for assistance
31 in the investigation. A respondent has the duty to cooperate specified in SCR
32 21.15(4) and 22.03(2) in respect to the district committee. The committee may
33 subpoena and compel the production of documents specified in SCR 22.03(8) and
34 22.42.

35 (2) When the director refers a matter to a committee, the respondent may
36 make a written request for the substitution of the investigator assigned to the
37 matter by the committee chairperson, or may provide a written waiver of the right
38 to request substitution. The request for substitution shall be made within 14 days
39 after receipt of notice of the assignment of the investigator. One timely request
40 for substitution shall be granted as a matter of right. Additional requests for
41 substitution shall be granted by the committee chairperson for good cause. When

¹¹ Adopted 9/16/19 (Petition 19-07).

1 a request for substitution is granted, the investigator initially assigned shall not
2 participate further in the matter.

3 (3) The district committee shall conduct an investigation and file an
4 investigative report with the director within 90 days after the date the respondent's
5 right to request substitution of the investigator assigned to the matter under sub.
6 (2) as a matter of right terminates or has been waived. The committee
7 chairperson, with notice to the grievant and respondent, may request an extension
8 of time to complete the investigative report from the director. The committee
9 chairperson shall set forth the reasons for the request and the date by which a
10 report will be filed in a written request for the extension. The director may
11 approve or deny the request, in the director's discretion. The investigative report
12 shall outline the relevant factual allegations and identify possible misconduct, if
13 any, and may make a recommendation as to the disposition of the matter. The
14 district committee shall include in reports to the director all relevant exculpatory
15 and inculpatory information obtained.

16 (4) The director shall send a copy of the investigative report of the
17 committee to the respondent and to the grievant. The respondent and the grievant
18 each may submit a written response to the investigative report within 10 days
19 after the date the report is sent to them.

20 (5) The director may withdraw the referral of a matter to a committee at
21 any time, and the committee thereupon shall terminate its investigation.¹²

22 23 **SCR 22.05 Disposition of investigation.**

24 (1) Upon completion of an investigation, the director may do one or more
25 of the following:

26 (a) Dismiss the matter for lack of sufficient evidence of cause to proceed.

27 (b) Divert the matter to an alternatives to discipline program as provided
28 in SCR 22.10.

29 (c) Obtain the respondent's consent to the imposition of a public or private
30 reprimand and proceed under SCR 22.09.

31 (d) Present the matter to the preliminary review committee for a
32 determination that there is cause to proceed in the matter.

33 (e) With the mutual consent of the attorney and the director to waive
34 presentation of the matter to the preliminary review committee, proceed in any
35 manner authorized by SCR 22.08(2).¹³

36 (2) The If the director dismisses the matter under sub. (1), the director
37 shall notify provide to the grievant in writing written notice of the decision to
38 dismiss, accompanied by a brief written statement of reasons for the director's

¹² The proposed repeal of this provision is under advisement per 10/29/19 conference (Petition 19-08).

¹³ Created 12/9/19 (Petition 19-11, Section 4).

1 **decision. The notice shall inform the grievant¹⁴** that the grievant may obtain
2 review by a preliminary review panel of the director's dismissal of a matter under
3 sub. (1) by submitting to the director a written request. The request for review
4 must be received by the director within 30 days after the date of the letter
5 notifying the grievant of the dismissal. The director shall send the request to the
6 chairperson of the preliminary review committee, who shall assign it to a
7 preliminary review panel. Upon a timely request by the grievant for additional
8 time, the director shall report the request to the chairperson of the preliminary
9 review committee, who may extend the time for submission of additional
10 information relating to the request for review.

11 (3) The preliminary review panel may affirm the dismissal or, if it
12 determines that the director has exercised the director's discretion erroneously,
13 refer the matter to the director for further investigation. A majority vote of the
14 panel is required to find that the director has exercised discretion erroneously.
15 The panel's decision is final, and there shall be no review of the panel's decision.
16 The chairperson of the preliminary review committee shall notify the grievant and
17 the respondent in writing of the panel's decision.
18

19 **SCR 22.06 Presentation to preliminary review committee.**

20 (1) The director shall submit investigative reports, including all relevant
21 exculpatory and inculpatory information obtained and appendices and exhibits, if
22 any, pursuant to SCR 22.05(1)(d) to the chairperson of the preliminary review
23 committee. The chairperson shall assign each matter to a panel for consideration.

24 (2) The director shall provide each member of the panel a copy of the
25 investigative report in the matter assigned to the panel and the responses of the
26 respondent and the grievant, if any.

27 (3) The director and staff designated by the director shall appear before
28 the panel and summarize the investigative reports and the director's position in the
29 matter.
30

31 **SCR 22.07 Preliminary review panels - procedure.**

32 (1) The preliminary review panels shall review the matters assigned to
33 them and determine in each whether there is cause for the director to proceed.

34 (2) The meetings and deliberations of the panels are private and
35 confidential. The panels shall take and retain full and complete minutes of their
36 meetings.

37 (3) If the panel determines that there is cause for the director to proceed in
38 the matter, it shall so inform the director in writing. A determination of cause to
39 proceed shall be by the affirmative vote of four or more members of the panel and
40 does not constitute a determination that there is clear, satisfactory and convincing
41 evidence of misconduct.

¹⁴ Amended 12/9/19 (Petition 19-11, Section 5).

1 (4) If the panel determines that the director has failed to establish cause to
2 proceed, it shall report the determination to the chairperson of the preliminary
3 review committee, who shall notify the director, the respondent, and the grievant
4 of the determination.
5

6 **SCR 22.08 Response to cause to proceed determination.**

7 (1)(a) If the preliminary review panel determines that the director has not
8 established cause to proceed in the matter, the director may dismiss the matter,
9 which is a final decision, or the director may continue the investigation and
10 resubmit the matter to a different panel within a reasonable time after the first
11 panel's determination. The director shall notify the respondent and the grievant of
12 the decision to dismiss the matter or continue the investigation.

13 (b) Following resubmission, if the panel determines that the director has
14 failed to establish cause to proceed, it shall report the determination to the
15 chairperson of the preliminary review committee, who shall dismiss the matter
16 and notify in writing the director, the respondent, and the grievant of the
17 dismissal. A decision of the panel on resubmission that the director has failed to
18 establish cause to proceed is final, and there is no review of that decision.

19 (c) (Repealed)

20 (2) If the preliminary review panel or the panel on resubmission
21 determines that the director has established cause to proceed in the matter, the
22 director shall decide on the appropriate discipline or other disposition to seek in
23 the matter and may do any of the following:

24 (a) Obtain the respondent's consent to the imposition of a public or private
25 reprimand.

26 (b) Divert the matter to an alternatives to discipline program as provided
27 in SCR 22.10.

28 (c) File with the supreme court and prosecute a complaint alleging
29 misconduct.
30

31 **SCR 22.09 Consensual private and public reprimands.**

32 (1) An agreement between the director and an attorney to the imposition
33 of a private or public reprimand shall be in a writing dated and signed by the
34 respondent and the director and shall contain a summary of the factual nature of
35 the misconduct and an enumeration of the rules of professional conduct for
36 attorneys that were violated.

37 (2) The director shall request the appointment of a referee by providing in
38 confidence to the clerk of the supreme court the names of the grievant and
39 respondent, the address of the respondent's principal office, and the date of the
40 consent agreement. The clerk or deputy clerk of the supreme court shall select a
41 an available referee from the panel provided in SCR 21.08, based on availability
42 and geographic proximity to the location of the respondent's principal office. The
43 chief justice or, in his or her absence, the senior justice chief justice's delegee

1 shall appoint the referee selected by the clerk or deputy clerk.¹⁵ The director shall
2 submit the agreement, accompanied by the respondent's public and private
3 disciplinary history, to the appointed referee for review and approval. The
4 director shall send a copy of the agreement to the grievant. The grievant may
5 submit a written response to the director within 30 days after being notified of the
6 agreement, and the director shall submit the response to the referee. The
7 respondent and the director may submit comments to the referee regarding the
8 grievant's response. The agreement, the grievant's response, and the comments of
9 the respondent and director shall be considered by the referee in confidence.

10 (3) If the referee approves the agreement, the referee shall issue the
11 reprimand in writing to the respondent and send a copy to the director. A private
12 reprimand shall be confidential.

13 (4) If the referee determines that the agreement is not supported by
14 sufficient facts or that the sanction falls outside the range of sanctions appropriate
15 in similar cases, the referee shall not approve the agreement. The referee shall, in
16 those cases, inform the director, the grievant, and the respondent in writing,
17 stating the basis and reasons for disapproval. The director shall then proceed in
18 the matter as the director may consider appropriate.

19 (5) If the respondent does not consent to a reprimand offered by the
20 director or the respondent's consent is unacceptable to the director, the director
21 may file a complaint with the supreme court alleging the same factual misconduct
22 and seeking the same reprimand to which consent was sought.

23 24 **SCR 22.10 Diversion to alternatives to discipline program.**

25 (1) *Offer of diversion.* At intake, during an investigation, or at the
26 conclusion of an investigation, if the director determines that the matter should be
27 diverted to an alternatives to discipline program, the director may offer the
28 attorney the opportunity to participate in the program. If the attorney rejects the
29 offer, the matter shall proceed as otherwise provided in this chapter. Diversion to
30 an alternatives to discipline program does not constitute discipline under this
31 chapter.

32 (2) *Alternatives to discipline program.* The alternatives to discipline
33 program may include mediation, fee arbitration, law office management
34 assistance, evaluation and treatment for alcohol and other substance abuse,
35 psychological evaluation and treatment, medical evaluation and treatment,
36 monitoring of the attorney's practice or trust account procedures, continuing legal
37 education, ethics school, and the multistate professional responsibility
38 examination, including those programs offered by the state bar of Wisconsin.

39 (3) *Eligibility for participation.* An attorney may participate in an
40 alternatives to discipline program when there is little likelihood that the attorney
41 will harm the public during the period of participation, when the director can

¹⁵ Adopted by S. Ct. Order 19-04, 2019 WI 77 (issued June 26, 2019, eff. July 1, 2020). (Petition 19-04).

1 adequately supervise the conditions of the program, and when participation in the
2 program is likely to benefit the attorney and accomplish the goals of the program.
3 Unless good cause is shown, an attorney may not participate in an alternatives to
4 discipline program if any of the following circumstances is present:

5 (a) The discipline likely to be imposed in the matter is more severe than a
6 private reprimand.

7 (b) The misconduct involves misappropriation of funds or property of a
8 client or a third party.

9 (c) The misconduct involves a serious crime as set forth in SCR 22.20(2).

10 (d) The misconduct involves family violence.

11 (e) The misconduct resulted in or is likely to result in actual injury, such
12 as loss of money, legal rights, or valuable property rights, to a client or other
13 person unless restitution is made a condition of diversion.

14 (f) The attorney has been publicly disciplined within the preceding five
15 years.

16 (g) The matter is of the same nature as misconduct for which the attorney
17 has been disciplined within the preceding five years.

18 (h) The misconduct involves dishonesty, fraud, deceit, or
19 misrepresentation.

20 (i) The misconduct involves sexual relations prohibited under SCR
21 20:1.8.

22 (j) The misconduct is the same as that for which the attorney previously
23 has participated in an alternatives to discipline program.

24 (k) The misconduct is part of a pattern of similar misconduct.

25
26 (4) *Diversion agreement.* If the attorney agrees to diversion to an
27 alternatives to discipline program, the terms of the diversion shall be set forth in a
28 written agreement between the attorney and the director. The agreement shall
29 specify the program to which the attorney is diverted, the general purpose of the
30 diversion, the manner in which the attorney's compliance with the program is to
31 be monitored, and the requirement, if any, for payment of restitution or costs. If
32 the diversion agreement is entered into after the director has reported the matter to
33 the preliminary review committee, pursuant to SCR 22.06(1), the agreement shall
34 be submitted for approval to the preliminary review panel to which the matter has
35 been assigned. If the preliminary review panel rejects the agreement, the matter
36 shall proceed as otherwise provided in this chapter matter shall be withdrawn
37 from the preliminary review committee.¹⁶

38 (5) *Costs of diversion.* The attorney shall pay all costs incurred in
39 connection with participation in an alternatives to discipline program, unless the
40 program provides otherwise, and the office of lawyer regulation shall not be
41 responsible for payment of the costs.

¹⁶ Adopted 12/9/19 (Petition 19-11, Section 6).

1 (6) *Effect of diversion.* (a) When the attorney enters into the alternatives
2 to discipline program, the underlying matter shall be held in abeyance and the file
3 shall note the diversion.

4 (b) If the director determines that the attorney has successfully completed
5 all requirements of the alternatives to discipline program, the director shall do one
6 of the following:

7 (i) Close the file in the matter if the director had not determined that the
8 matter warranted investigation or reported the matter to the preliminary review
9 committee, pursuant to SCR 22.06(1).

10 (ii) Dismiss the matter if the director had determined that the matter
11 warranted investigation or reported the matter to the preliminary review
12 committee, pursuant to SCR 22.06(1).

13 (7) *Breach of diversion agreement.* (a) If the director has reason to
14 believe that the attorney has breached a diversion agreement ~~entered into prior to~~
15 ~~a report of the matter to the preliminary review committee, pursuant to SCR~~
16 ~~22.06(1), the attorney shall be given the opportunity to respond, and the director~~
17 ~~parties may modify the diversion agreement or the director may, in the director's~~
18 ~~sole discretion, terminate the diversion agreement and proceed with the matter as~~
19 ~~otherwise provided in this chapter.~~¹⁷

20 (b) ~~If the director has reason to believe that the attorney has breached a~~
21 ~~diversion agreement entered into after the matter was reported to the preliminary~~
22 ~~review committee, pursuant to SCR 22.06(1), the director shall give written notice~~
23 ~~of the facts establishing the breach to the attorney and to the preliminary review~~
24 ~~panel that approved the diversion agreement. The attorney may submit a written~~
25 ~~response to the preliminary review panel within 20 days after notice is given. The~~
26 ~~director has the burden to establish by a preponderance of the evidence the~~
27 ~~materiality of the breach; the attorney has the burden to establish by a~~
28 ~~preponderance of the evidence justification for the breach. If, after consideration~~
29 ~~of the information presented by the director and the attorney's response, if any, the~~
30 ~~panel determines that the breach was material and without justification, the~~
31 ~~agreement shall be terminated and the matter shall proceed as otherwise provided~~
32 ~~in this chapter. If the panel determines that the breach was not material or that~~
33 ~~there was justification, the director may modify the diversion agreement in~~
34 ~~response to the breach. If the panel determines there was no breach, the matter~~
35 ~~shall proceed pursuant to the terms of the original diversion agreement.~~

36 (c) ~~If the alleged breach is referred for determination to a preliminary~~
37 ~~review panel under par. (b), upon motion of either party, a referee selected and~~
38 ~~appointed pursuant to SCR 22.13(3) shall hold a hearing on the matter. Upon~~
39 ~~conclusion of the hearing, the referee shall submit written findings of fact and~~
40 ~~conclusions of law to the panel.~~¹⁸

¹⁷ Adopted 12/9/19 (Petition 19-11, Section 7).

¹⁸ Repealed 12/9/19 (Petition 19-11, Section 8).

1 (8) *Confidentiality of files and records.* All files and records of the
2 diversion of a matter shall be confidential, except as the supreme court may order
3 otherwise. Information regarding misconduct disclosed to a treatment provider by
4 an attorney while in an alternatives to discipline program need not be disclosed to
5 the office of lawyer regulation, provided the misconduct occurred prior to the
6 attorney's entry into the program.

7
8 **SCR 22.11 Initiation of proceeding.**

9 (1) The director shall commence a proceeding alleging misconduct by
10 filing a complaint and an order to answer with the supreme court and serving a
11 copy of each on the respondent.

12 (2) ~~(a) The Except as provided in sub. (b) or (c), complaint shall set forth~~
13 ~~only those facts and misconduct allegations for which the preliminary review~~
14 ~~panel determined there was cause to proceed, and The complaint may set forth the~~
15 ~~discipline or other disposition sought. Facts and misconduct allegations arising~~
16 ~~under SCR 22.20 and SCR 22.22 may be set forth in a complaint without a~~
17 ~~preliminary review panel finding of cause to proceed.¹⁹~~

18 ~~(b) A complaint may set forth facts and misconduct allegations arising~~
19 ~~under SCR 22.20 and SCR 22.22 without a preliminary review panel finding of~~
20 ~~cause to proceed.²⁰~~

21 ~~(c) A complaint may set forth facts and misconduct allegations without a~~
22 ~~preliminary review panel finding of cause to proceed if presentation to the~~
23 ~~preliminary review committee is waived under SCR 22.05(1)(e).²¹~~

24 (3) The director may retain counsel to file, serve and prosecute the
25 complaint.

26 (4) The complaint shall be entitled: In the Matter of Disciplinary
27 Proceedings Against [name of respondent], Attorney at Law; Office of Lawyer
28 Regulation, Complainant; [name of respondent], Respondent. The complaint
29 shall be captioned in the supreme court and contain the name and residence
30 address of the respondent or the most recent address furnished by the respondent
31 to the state bar.

32 (5) The complaint may be amended as provided in the rules of civil
33 procedure.

34
35
36

¹⁹ Adopted 12/9/19 (Petition 19-11, Section 9).

²⁰ Created 12/9/19 (Petition 19-11, Section 10).

²¹ Created 12/9/19 (Petition 19-11, Section 11).

1 **SCR 22.12 Stipulation.**

2 (1) The director may file with the complaint a stipulation of the director
3 and the respondent to the facts, conclusions of law regarding misconduct, and
4 discipline to be imposed, together with a memorandum in support of the
5 stipulation. The respondent may file a response to the Director's memorandum
6 within 14 days of the date of filing of the stipulation. The supreme court may
7 consider the complaint and stipulation without the appointment of a referee, in
8 which case the supreme court may approve the stipulation, reject the stipulation,
9 or direct the parties to consider specific modifications to the stipulation.²²

10 **SCR 22.13 Service of the complaint.**

11 (1) The complaint and the order to answer shall be served upon the
12 respondent in the same manner as a summons under section 801.11(1) of the
13 statutes. If, with reasonable diligence, the respondent cannot be served under
14 section 801.11(1)(a) or (b) of the statutes, service may be made by sending by
15 certified mail an authenticated copy of the complaint and order to answer to the
16 most recent address furnished by the respondent to the state bar.

17 (2) Service of other pleadings and papers shall be in the manner provided
18 in the rules of civil procedure.

19 (3) Except as provided in SCR 22.12, upon receipt of proof of service of
20 the complaint, the clerk or deputy clerk of the supreme court shall select a an
21 available referee from the panel provided in SCR 21.08, based on the availability
22 and geographic proximity to the location of the respondent's principal office, and
23 the The chief justice or, in his or her absence, the senior justice chief justice's
24 delegee shall issue an order appoint appointing the referee selected by the clerk or
25 deputy clerk to conduct a hearing on the complaint.²³

26 (4) Within 10 days after notice of appointment of the referee, the director
27 and the respondent each may file with the supreme court a motion for substitution
28 of the referee. The filing of the motion does not stay the proceedings before the
29 referee unless ordered by the supreme court. One timely motion filed by the
30 director and one timely motion filed by the respondent shall be granted as a matter
31 of right. Additional motions shall be granted for good cause.

32 (5) Following the appointment of a referee, the parties shall file all papers
33 and pleadings with the supreme court and serve a copy on the referee.

34 **SCR 22.14 Answer, no contest.**

35 (1) The respondent shall file an answer with the supreme court and serve
36 a copy on the office of lawyer regulation within 20 days after service of the
37

²² Adopted 9/16/19 (Petition 19-06).

²³ Adopted by S. Ct. Order 19-04, 2019 WI 77 (issued June 26, 2019, eff. July 1, 2020). (Petition 19-04).

1 complaint. The referee may, for cause, set a different time for the filing of the
2 answer.

3 (2) The respondent may by answer plead no contest to allegations of
4 misconduct in the complaint. The referee shall make a determination of
5 misconduct in respect to each allegation to which no contest is pleaded and for
6 which the referee finds an adequate factual basis in the record. In a subsequent
7 disciplinary or reinstatement proceeding, it shall be conclusively presumed that
8 the respondent engaged in the misconduct determined on the basis of a no contest
9 plea.

10
11 **SCR 22.15 Scheduling conference.**

12 (1) The referee shall hold a scheduling conference within 20 days after
13 the time for answer and may do so by telephone. Each party shall participate in
14 person or by counsel. If no answer is filed, the referee may hear any motions,
15 including a motion for default, at the scheduling conference.

16 (2) If an answer is filed, the referee shall do all of the following:

17 (a) Provide for depositions upon request of either party and for time limits
18 for the completion of depositions.

19 (b) Determine the form and extent of other discovery to be allowed and
20 time limits for its completion.

21 (c) Define the issues and determine if they can be simplified.

22 (d) Determine the necessity or desirability of amending the pleadings.

23 (e) Determine if the parties can stipulate to any facts or agree to the
24 identity or authenticity of documents.

25 (f) Determine if trial briefs are to be filed and the time limits for filing.

26 (g) Consider any other matter which may aid in the disposition of the
27 proceeding.

28 (3) The referee may adjourn the scheduling conference or order additional
29 scheduling conferences. Upon conclusion of the conference, the referee shall issue
30 an order which shall control the proceedings, including all matters determined at
31 the scheduling conference.

32
33 **SCR 22.16 Proceedings before a referee.**

34 (1) [The referee has the powers of a judge trying a civil action]²⁴ and shall
35 conduct the hearing as the trial of a civil action to the court. [The rules of civil
36 procedure and evidence shall be followed.]²⁵ The referee shall obtain the services
37 of a court reporter to make a verbatim record of the proceedings, as provided in
38 SCR 71.01 to 71.03.

²⁴ This provision is subject to review.

²⁵ This provision is subject to review.

1 (2) The hearing shall be held in the county of the respondent's principal
2 office or, in the case of a non-resident attorney, in the county designated by the
3 director. The referee, for cause, may designate a different location.

4 (3) Unless otherwise provided by law or in this chapter, the hearing
5 before a referee and any paper filed in the proceeding is public.

6 (4)(a) If in the course of the proceeding the respondent claims to have a
7 medical incapacity that makes the defense of the proceeding impossible, the
8 referee shall conduct a hearing and make findings concerning whether a medical
9 incapacity makes defense of the proceeding impossible. The referee may order
10 the examination of the respondent by qualified medical or psychological experts.

11 (b) All papers, files, transcripts, communications, and proceedings on the
12 issue of medical incapacity shall be confidential and shall remain confidential
13 until the supreme court has issued an order suspending the attorney's license to
14 practice law, or has otherwise authorized disclosure.

15 (c) If the referee finds no medical incapacity that would make the defense
16 of the proceeding impossible, the referee shall proceed with the misconduct
17 action.

18 (d) If the referee finds that a medical incapacity makes the defense of the
19 proceeding impossible, the referee shall file a report promptly with the supreme
20 court. If the court disapproves the referee's finding, the court shall direct the
21 referee to proceed with the misconduct action. If the court approves the referee's
22 finding, the court shall abate the misconduct proceeding and suspend the
23 respondent's license to practice law for medical incapacity until the court orders
24 reinstatement of the attorney's license under SCR 22.36. Upon reinstatement, the
25 court shall direct the referee to proceed with the misconduct action.

26 (5) The office of lawyer regulation has the burden of demonstrating by
27 clear, satisfactory and convincing evidence that the respondent has engaged in
28 misconduct.

29 (6) Within 30 days after the conclusion of the hearing, or the filing of the
30 hearing transcript, or the filing of a final post-hearing brief, whichever is later, the
31 referee shall file with the supreme court a report setting forth findings of fact,
32 conclusions of law regarding the respondent's misconduct, if any, and a
33 recommendation for dismissal of the proceeding or the imposition of specific
34 discipline, or a statement advising the court why the referee cannot comply with
35 this deadline and the date by which the referee will file the report and
36 recommendation.²⁶

37 (7) The referee shall file with the supreme court a recommendation as to
38 the assessment of reasonable costs within 10 days after the parties' submissions
39 regarding assessment of costs.

40
41 COMMENT

²⁶ Adopted by S. Ct. Order 19-04, 2019 WI 77 (issued June 26, 2019, eff. July 1, 2020). (Petition 19-04).

1
2 The court's general policy regarding assessment of costs in lawyer
3 disciplinary matters is set forth in SCR 22.24. Procedures for filing the statement
4 on costs and objecting to a statement on costs are set forth in SCR 22.24 (2).

5 If the respondent does not object to the statement of costs then the
6 referee's recommendation regarding costs shall be filed within 10 days of the
7 deadline for filing an objection. If an objection is filed the recommendation shall
8 be filed within 10 days after receiving the OLR's reply to the objection.

9
10 **SCR 22.17 Review; appeal.**

11 (1) Within 20 days after the filing of the referee's report, the director or
12 the respondent may file with the supreme court an appeal from the referee's
13 report.

14 (2) If no appeal is filed timely, the supreme court shall review the
15 referee's report; adopt, reject or modify the referee's findings and conclusions or
16 remand the matter to the referee for additional findings; and determine and
17 impose appropriate discipline. The court, on its own motion, may order the
18 parties to file briefs in the matter.

19 (3) An appeal from the report of a referee is conducted under the rules
20 governing civil appeals to the supreme court. The supreme court shall place the
21 appeal on its first assignment of cases after the briefs are filed.

22
23
24 **SCR 22.18 Motion for reconsideration.**

25 (1) The director or the respondent may seek reconsideration of the
26 judgment or opinion of the supreme court by filing a motion for reconsideration
27 within 20 days after the decision of the court is filed.

28 (2) The filing of a motion for reconsideration does not stay enforcement
29 of the judgment. A request for a stay pending determination of the motion for
30 reconsideration shall be made to the supreme court.

31
32 **SCR 22.185 Enforcement of Disciplinary Orders.**

33 (1) The supreme court, on its own motion, upon the motion of the director,
34 or upon the motion of a special investigator acting under SCR 22.25 filed in the
35 disciplinary proceeding in which an order was issued, may enforce any
36 disciplinary order where the respondent has failed to substantially comply with
37 the order.

38 (2) Upon filing of a motion under sub. (1), the supreme court may order
39 the respondent to show cause why the relief requested in the motion should not be
40 granted. Within the time set forth in the order, the respondent shall have the right
41 to file with the supreme court a written response to the order to show cause, and
42 respondent shall serve a copy of such response on the director, or special

1 investigator. The director, or special investigator, may file a reply memorandum
2 within 10 days after filing of the response.

3 (3) The supreme court may decide the motion upon the submissions of the
4 parties, or may refer the matter to the referee appointed in the proceeding, who
5 shall promptly conduct a hearing and file a report with the supreme court
6 containing findings of fact, conclusions of law, and a recommendation for
7 disposition of the motion. Unless otherwise directed by the supreme court, the
8 referee shall follow the procedures in SCR 22.15 and SCR 22.16, and may
9 conduct the hearing by telephone. A report issued by the referee is reviewable
10 under SCR 22.17.

11 (4) Upon the submissions of the parties, or upon receipt of the report of
12 the referee, the supreme court shall decide the motion, and may either deny or
13 dismiss the motion, or issue such orders as are necessary to enforce the order.

14 (5) Nothing in this rule shall:

15 (a) Limit the authority of the director, or a special investigator, to initiate
16 an investigation or proceeding for misconduct or medical incapacity under these
17 rules.

18 (b) Limit the constitutional, statutory, or inherent authority of the supreme
19 court to enforce an order issued in a disciplinary proceeding.²⁷

20
21 **SCR 22.19 Petition for consensual license revocation.**

22 (1) An attorney who is the subject of an investigation for possible
23 misconduct or the respondent in a proceeding may file with the supreme court a
24 petition for the revocation by consent or his or her license to practice law.

25 (2) The petition shall state that the petitioner cannot successfully defend
26 against the allegations of misconduct.

27 (3) If a complaint has not been filed, the petition shall be filed in the
28 supreme court and shall include the director's summary of the misconduct
29 allegations being investigated. Within 20 days after the date of filing of the
30 petition, the director shall file in the supreme court a recommendation on the
31 petition. Upon a showing of good cause, the supreme court may extend the time
32 for filing a recommendation.

33 (4) If a complaint has been filed, the petition shall be filed in the supreme
34 court and served on the director and on the referee to whom the proceeding has
35 been assigned. Within 20 days after the filing of the petition, the director shall
36 file in the supreme court a response in support of or in opposition to the petition

²⁷ Adopted 10/29/19 (Petition 19-09).

1 and serve a copy on the referee. Upon a showing of good cause, the supreme
2 court may extend the time for filing a response. The referee shall file a report and
3 recommendation on the petition in the supreme court within 30 days after receipt
4 of the director's response.

5 (5) The supreme court shall grant the petition and revoke the petitioner's
6 license to practice law or deny the petition and remand the matter to the director
7 or to the referee for further proceedings.

8
9 **SCR 22.20 Summary license suspension on criminal conviction.**

10 (1) *Summary suspension.* Upon receiving satisfactory proof that an
11 attorney has been found guilty or convicted of a serious crime, the supreme court
12 may summarily suspend the attorney's license to practice law pending final
13 disposition of a disciplinary proceeding, whether the finding of guilt or the
14 conviction resulted from a plea of guilty or no contest or from a verdict after trial
15 and regardless of the pendency of an appeal.

16 (2) *Serious crime, definition.* In this rule, "serious crime" means a felony
17 or any lesser crime which, in the opinion of the court, reflects adversely on the
18 attorney's fitness to be licensed to practice law.

19 (3) *Reinstatement on reversal.* The license of an attorney that has been
20 summarily suspended under sub. (1) shall be reinstated forthwith upon the
21 reversal of the conviction. The reinstatement shall not terminate any disciplinary
22 proceeding then pending against the attorney.

23 (4) *Filing certificate of finding of guilt, conviction.* The clerk of a court
24 within the state in which an attorney is found guilty or convicted of any crime
25 shall send a certificate of the finding of guilt or of the conviction to the clerk of
26 the supreme court within five days after the finding or conviction, whichever first
27 occurs.

28 (5) *Proof of guilt.* In a proceeding based on an attorney's having been
29 found guilty or convicted of a crime, a certified copy of the record in the
30 proceeding or the certificate of conviction shall be conclusive evidence of the
31 attorney's guilt of the crime of which found guilty or convicted.

32 (6) *Filing of complaint.* The director, or special investigator acting under
33 SCR 22.25, shall file the complaint in the disciplinary proceeding within 2 months
34 of the effective date of the summary suspension or shall show cause why the
35 summary suspension should continue. The respondent attorney may file a
36 response with the supreme court within 10 days of service. Reinstatement under
37 this section does not terminate any misconduct investigation or disciplinary
38 proceeding pending against the attorney.

39 (7) *Filing of referee report.* The referee appointed to conduct a hearing on
40 the complaint shall conduct the hearing promptly and file the report required by
41 SCR 22.16 no later than 3 months after the filing of the complaint. In the event
42 the report is not filed within 3 months of the filing of the complaint, the
43 respondent attorney may move the supreme court for reinstatement pending

1 completion of the disciplinary proceeding. Reinstatement under this section does
2 not terminate any misconduct investigation or disciplinary proceeding pending
3 against the attorney.
4

5 **SCR 22.21 Temporary suspension.**

6 (1) The supreme court, on its own motion, upon the motion of the
7 director, or upon the motion of a special investigator acting under SCR 22.25,
8 may suspend temporarily an attorney's license to practice law where it appears
9 that the attorney's continued practice of law poses a threat to the interests of the
10 public and the administration of justice.

11 (2) Before entering an order suspending an attorney's license under sub.
12 (1), the supreme court shall order the attorney to show cause why the license to
13 practice law should not be suspended temporarily. The attorney shall file with the
14 supreme court a written response to the order and serve a copy of the response on
15 the director within the time set forth in the order. The director, or special
16 investigator acting under SCR 22.25, may file a memorandum in support of or in
17 opposition to the temporary license suspension within 10 days after the attorney's
18 response is filed. ~~All Except as provided in sub. (2m) and (3), SCR 22.34 and~~
19 ~~SCR 22.40, all papers, files, transcripts, communications, and proceedings shall~~
20 ~~be confidential and shall remain~~ are confidential until the supreme court has
21 issued an order to show cause.²⁸

22 (2m) Following the issuance of the order to show cause under sub. (2), the
23 motion under sub. (1), and the order to show cause are public information, except
24 as follows:

25 (a) The name of the special investigator or any person alleging that the
26 attorney committed an act of misconduct.

27 (b) Medical information regarding the attorney who is the subject of the
28 order to show cause.

29 (c) Financial information regarding the attorney who is the subject of the
30 order to show cause, or of any person alleging the attorney committed an act of
31 misconduct, if the financial information is unrelated to the order to show cause.

32 (d) Information that is subject to legal privilege, including the attorney-
33 client privilege, unless such privilege is waived in writing by the person or
34 persons holding such privilege.

35 (e) As otherwise expressly provided in this chapter or by law or by order
36 of the supreme court.²⁹

37 (3) *Filing of complaint.* The director, or a special investigator acting
38 under SCR 22.25, shall file the complaint in the disciplinary proceeding within 4

²⁸ Adopted 9/16/19 (Petition 19-07).

²⁹ Adopted 9/16/19 (Petition 19-07).

1 months of the effective date of the temporary suspension imposed under this
 2 section, or shall show cause why the temporary suspension should continue. The
 3 respondent attorney may file a response with the supreme court within 10 days of
 4 service. The statement of cause to continue the temporary suspension and the
 5 attorney's response are public information, subject to the same exceptions set
 6 forth in sub. (2m) (a) to (d).³⁰ Reinstatement under this section shall not terminate
 7 any misconduct investigation or disciplinary proceeding pending against the
 8 attorney.

9 (4) *Filing of referee report.* The referee appointed to conduct a hearing on
 10 the complaint shall conduct the hearing promptly and file the report required by
 11 SCR 22.16 no later than 6 months after the filing of the complaint. If the report is
 12 not filed within 6 months of the filing of the complaint, the respondent attorney
 13 may move the supreme court for reinstatement pending completion of the
 14 disciplinary proceeding. Reinstatement under this section does not terminate any
 15 misconduct investigation or disciplinary proceeding pending against the attorney.
 16

17 **SCR 22.22 Reciprocal discipline.**

18 (1) An attorney on whom public discipline for misconduct or a license
 19 suspension for medical incapacity has been imposed by another jurisdiction shall
 20 promptly notify the director of the matter. Failure to furnish the notice within 20
 21 days of the effective date of the order or judgment of the other jurisdiction
 22 constitutes misconduct.

23 (2) Upon the receipt of a certified copy of a judgment or order of another
 24 jurisdiction imposing discipline for misconduct or a license suspension for
 25 medical incapacity of an attorney admitted to the practice of law or engaged in the
 26 practice of law in this state, the director may file a complaint in the supreme court
 27 containing all of the following:

28 (a) A certified copy of the judgment or order from the other jurisdiction.

29 (b) A motion requesting an order directing the attorney to inform the
 30 supreme court in writing within 20 days of any claim of the attorney predicated on
 31 the grounds set forth in sub. (3) that the imposition of the identical discipline or
 32 license suspension by the supreme court would be unwarranted and the factual
 33 basis for the claim.

34 (3) The supreme court shall impose the identical discipline or license
 35 suspension unless one or more of the following is present:

36 (a) The procedure in the other jurisdiction was so lacking in notice or
 37 opportunity to be heard as to constitute a deprivation of due process.

38 (b) There was such an infirmity of proof establishing the misconduct or
 39 medical incapacity that the supreme court could not accept as final the conclusion
 40 in respect to the misconduct or medical incapacity.

41 (c) The misconduct justifies substantially different discipline in this state.

³⁰ Adopted 9/16/19 (Petition 19-07).

1 (4) Except as provided in sub. (3), a final adjudication in another jurisdiction that
2 an attorney has engaged in misconduct or has a medical incapacity shall be
3 conclusive evidence of the attorney's misconduct or medical incapacity for
4 purposes of a proceeding under this rule.

5 (5) The supreme court may refer a complaint filed under sub. (2) to a
6 referee for a hearing and a report and recommendation pursuant to SCR 22.16. At
7 the hearing, the burden is on the party seeking the imposition of discipline or
8 license suspension different from that imposed in the other jurisdiction to
9 demonstrate that the imposition of identical discipline or license suspension by
10 the supreme court is unwarranted.

11 (6) If the discipline or license suspension imposed in the other jurisdiction
12 has been stayed, any reciprocal discipline or license suspension imposed by the
13 supreme court shall be held in abeyance until the stay expires.

14
15 **SCR 22.23 Publication of disposition.**

16 (1) With the exception of the supreme court's disposition of a private
17 reprimand or dismissal of a proceeding, the supreme court's disposition of a
18 proceeding under this chapter shall be published in an official publication of the
19 state bar of Wisconsin and in the official publications specified in SCR 80.01. A
20 party may file a request to publish a dismissal of a proceeding.

21 (2) The director shall send notice of a public reprimand or a license
22 suspension or revocation to the state bar of Wisconsin [and to a newspaper of
23 general circulation in each county in which the attorney maintained an office for
24 the practice of law.]³¹

25 (3) The director shall notify all judges in the state of a license suspension
26 or revocation.

27
28 **SCR 22.24 Assessment of costs.**

29 (1) The supreme court may assess against the respondent all or a portion
30 of the costs of a disciplinary proceeding in which misconduct is found, a medical
31 incapacity proceeding in which it finds a medical incapacity, ~~or a reinstatement~~
32 ~~proceeding, or a motion to enforce an order issued in a disciplinary proceeding,~~³²
33 and may enter a judgment for costs. The director may assess all or a portion of
34 the costs of an investigation when discipline is imposed under SCR 22.09. Costs
35 are payable to the office of lawyer regulation.

36 (1m) The court's general policy is that upon a finding of misconduct it is
37 appropriate to impose all costs, including the expenses of counsel for the office of
38 lawyer regulation, upon the respondent. In some cases the court may, in the
39 exercise of its discretion, reduce the amount of costs imposed upon a respondent.

³¹ This provision remains subject to review.

³² Adopted 10/29/19 (Petition 19-09).

1 In exercising its discretion regarding the assessment of costs, the court will
2 consider the statement of costs, any objection and reply, the recommendation of
3 the referee, and all of the following factors:

4 (a) The number of counts charged, contested, and proven.
5 (b) The nature of the misconduct.
6 (c) The level of discipline sought by the parties and recommended by the
7 referee.

8 (d) The respondent's cooperation with the disciplinary process.

9 (e) Prior discipline, if any.

10 (f) Other relevant circumstances.

11 (2) In seeking the assessment of costs by the supreme court, the director
12 shall file in the court, with a copy to the referee and the respondent, a statement of
13 costs within 20 days after the filing of the referee's report or a SCR 22.12 or
14 22.34(10) stipulation, together with a recommendation regarding the costs to be
15 assessed against the respondent. If an appeal of the referee's report is filed or the
16 supreme court orders briefs to be filed in response to the referee's report, a
17 supplemental statement of costs and recommendation regarding the assessment of
18 costs shall be filed within 20 days of the date of oral argument or, if no oral
19 argument is held, the filing date of the last brief on appeal. The recommendation
20 should explain why the particular amount of costs is being sought. The
21 respondent may file an objection to the statement of costs and recommendation
22 within 21 days after service of the statement of costs. A respondent who objects
23 to a statement of costs must explain, with specificity, the reasons for the objection
24 and must state what he or she considers to be a reasonable amount of costs. The
25 objection may include relevant supporting documentation. The office of lawyer
26 regulation may reply within 11 days of receiving the objection. In proceeding
27 before a referee the referee shall make a recommendation to the court regarding
28 costs. The referee should explain the recommendation addressing the factors set
29 forth in SCR 22.24 (1m). The referee shall consider the submissions of the parties
30 and the record in the proceeding. No further discovery or hearing is authorized.

31 (3) Upon the assessment of costs by the supreme court, the clerk of the
32 supreme court shall issue a judgment for costs and furnish a transcript of the
33 judgment to the director. The transcript of the judgment may be filed and
34 docketed in the office of the clerk of court in any county and shall have the same
35 force and effect as judgments docketed pursuant to Wis. Stat. §§ 809.25 and
36 806.16 (1997-98).

37
38 **SCR 22.25 Misconduct and malfeasance allegations against lawyer**
39 **regulation system participants.**

40 (1) Allegations of misconduct against the director, a lawyer member of
41 staff, retained counsel, a lawyer member of a district committee, a lawyer member
42 of the preliminary review committee, a lawyer member of the board of
43 administrative oversight, or a referee shall be assigned by the director for

1 investigation to a special investigator. The supreme court shall appoint lawyers
 2 who are not currently participating in the lawyer regulation system and are not
 3 among the lawyers from whom retained counsel is selected under SCR 21.05 to
 4 serve as special investigators. The director shall assign a special investigator in
 5 rotation. A special investigator may discuss confidential matters with other
 6 special investigators. All records of matters referred to a special investigator or to
 7 the special preliminary review panel shall be retained by the director as required
 8 under SCR 22.44 and 22.45.

9 (2) Within 14 days after notice of assignment of a matter to a special
 10 investigator, the respondent may make a written request for the substitution of the
 11 special investigator. One timely request for substitution shall be granted by the
 12 director as a matter of right. Additional requests for substitution shall be granted
 13 for good cause. When a request for substitution is granted, the special
 14 investigator initially assigned shall not participate further in the matter.

15 (3) If the special investigator determines that there is not sufficient
 16 information to support a ~~possible finding of cause to proceed an allegation of~~
 17 ~~possible misconduct~~, the special investigator may close the matter. The special
 18 investigator shall notify the grievant in writing that the grievant may obtain
 19 review by the special preliminary review panel of the closure by submitting a
 20 written request to the special investigator. The request for review must be
 21 received by the special investigator within 30 days after the date of the letter
 22 notifying the grievant of the closure. The special investigator shall send the
 23 request for review to the special preliminary review panel ~~consisting of 4 lawyers~~
 24 ~~and 3 public members appointed by the supreme court and having a quorum of 4~~
 25 ~~members. Members of the special preliminary review panel serve staggered 3-~~
 26 ~~year terms, as described in sub. (3m).³³~~ A member may serve not more than 2
 27 consecutive 3-year terms. Upon a timely request by the grievant for additional
 28 time, the special investigator shall report the request to the chairperson of the
 29 special preliminary review panel, who may extend the time for submission of
 30 additional information relating to the request for review. If the panel affirms the
 31 investigator's determination, the special preliminary review panel shall inform the
 32 grievant. The panel's decision affirming closure of the matter is final. If the panel
 33 does not concur in the investigator's determination, it shall direct the investigator
 34 to initiate an investigation of the matter.

35 ~~(3m) The special preliminary review panel consists of 4 lawyers and 3~~
 36 ~~public members, appointed by the supreme court and having a quorum of 4~~
 37 ~~members. Members of the special preliminary review panel serve staggered 3-~~
 38 ~~year terms. A member may not serve more than 2 consecutive 3-year terms.³⁴~~

³³ Adopted 10/29/19 (Petition 19-08, Section 7).

³⁴ Adopted 10/29/19 (Petition 19-08, Section 8).

1 (4) If the special investigator determines that the information provided is
2 sufficient to support ~~a possible finding of cause to proceed~~ an allegation of
3 misconduct, the special investigator shall conduct an investigation of the matter.
4 Upon commencing an investigation, the special investigator shall notify the
5 respondent of the matter being investigated unless in the opinion of the special
6 investigator the investigation of the matter requires otherwise. The respondent
7 shall fully and fairly disclose all facts and circumstances pertaining to the alleged
8 misconduct with 20 days after being served by ordinary mail a request for a
9 written response. The special investigator may allow additional time to respond.
10 Except in limited circumstances when good cause is shown and a response
11 summary is more appropriate, the special investigator shall provide the grievant a
12 copy of the respondent's response and the opportunity to comment in writing on
13 the respondent's response. Following receipt of the response, the special
14 investigator may conduct further investigation and may compel the respondent to
15 answer questions, furnish documents, and present information deemed relevant to
16 the investigation. In the course of the investigation, the respondent's willful
17 failure to provide relevant information, to answer questions fully, or to furnish
18 documents and the respondent's misrepresentation in a disclosure are misconduct,
19 regardless of the matters asserted in the grievance.³⁵ Upon completion of the
20 investigation, the special investigator shall do one of the following:

21 (a) The special investigator may dismiss the matter and notify the grievant
22 in writing that the grievant may obtain review of the dismissal by submitting to
23 the special investigator a written request. The request for review must be received
24 within 30 days after the date of the letter notifying the grievant of the dismissal.
25 The special investigator shall send the request for review to the special
26 preliminary review panel. Upon a timely request by the grievant for additional
27 time, the special investigator shall report the request to the chairperson of the
28 special preliminary review panel, who may extend the time for submission of
29 additional information relating to the request for review. If the panel affirms the
30 investigator's determination, the special preliminary review panel shall inform the
31 grievant. The panel's decision affirming dismissal of the matter is final. If the
32 panel does not concur in the investigator's determination, the panel shall direct the
33 investigator to investigate the matter further.

34 (b) The special investigator may prepare an investigative report and send
35 a copy of it to the respondent and to the grievant. The respondent and grievant
36 each may submit to the special investigator a written response to the report within
37 10 days after the copy of the report is sent.

38 (5) The special investigator may submit the investigative report and the
39 response of the respondent and the grievant, if any, to the special preliminary
40 review panel to determine whether there is cause for the special investigator to
41 proceed in the matter. A determination of cause to proceed shall be by the
42 affirmative vote of four or more members of the panel and does not constitute a

³⁵ Adopted 10/29/19 (Petition 19-08, Section 9).

1 determination that there is clear, satisfactory and convincing evidence of
2 misconduct.

3 (6)(a) If the special preliminary review panel determines that cause to
4 proceed in the matter has not been established, the special investigator may
5 dismiss the matter, which is a final decision, or the special investigator may
6 continue the investigation and resubmit the matter to the special preliminary
7 review panel within a reasonable time after the panel's determination.

8 (b) Following resubmission, if the special preliminary review panel
9 determines that the special investigator has failed to establish cause to proceed, it
10 shall dismiss the matter and notify in writing the special investigator, the
11 respondent, and the grievant of the dismissal. The panel's decision to dismiss after
12 resubmission is final and there is no further review.³⁶

13 ~~(c) The special preliminary review panel shall notify the grievant in~~
14 ~~writing that the grievant may obtain review by a referee of the panel's dismissal~~
15 ~~by submitting a written request to the director. The referee shall be selected by~~
16 ~~the clerk of the supreme court, based on availability and geographic proximity to~~
17 ~~the respondent's principal office, and appointed by the chief justice or, in his or~~
18 ~~her absence, by the senior justice. The request for review must be received within~~
19 ~~30 days after the date of the letter notifying the grievant of the dismissal. The~~
20 ~~director may, upon a timely request by the grievant for additional time, extend the~~
21 ~~time for submission of additional information relating to the request for review.~~
22 ~~The decision of the referee affirming the dismissal or referring the matter to the~~
23 ~~special investigator for further investigation is final, and there shall be no review~~
24 ~~of the referee's decision.~~³⁷

25 (7) If the special preliminary review panel determines that there is cause
26 to proceed in the matter, the special investigator may take any of the actions set
27 forth in SCR 22.08(2). The special investigator need not obtain approval of a
28 diversion agreement from the special preliminary review panel. In cases where
29 the special investigator files a complaint with the supreme court, the special
30 investigator may prosecute the complaint personally or may assign responsibility
31 for filing, serving, and prosecuting the complaint to counsel retained by the
32 director for such purposes.

33 (8) Allegations of malfeasance against the director, retained counsel, a
34 member of a district committee, a member of the preliminary review committee, a
35 member of the board of administrative oversight, a special investigator, a member
36 of the special preliminary review panel, or a referee shall be referred by the
37 director to the supreme court for appropriate action.

³⁶ Adopted by S. Ct. Order 19-04, 2019 WI 77 (issued June 26, 2019, eff. July 1, 2020). (Petition 19-04).

³⁷ Repealed by S. Ct. Order 19-04, 2019 WI 77 (issued June 26, 2019, eff. July 1, 2020). (Petition 19-04).

1 (9) Allegations of malfeasance against a member of the staff of the office
2 of lawyer regulation shall be referred to the director for appropriate personnel
3 action.
4

5 **SCR 22.26 Activities following suspension or revocation.**

6 (1) On or before the effective date of license suspension or revocation, an
7 attorney whose license is suspended or revoked shall do all of the following:

8 (a) Notify by certified mail all clients being represented in pending
9 matters of the suspension or revocation and of the attorney's consequent inability
10 to act as an attorney following the effective date of the suspension or revocation.

11 (b) Advise the clients to seek legal advice of their choice elsewhere.

12 (c) Promptly provide written notification to the court or administrative
13 agency and the attorney for each party in a matter pending before a court or
14 administrative agency of the suspension or revocation and of the attorney's
15 consequent inability to act as an attorney following the effective date of the
16 suspension or revocation. The notice shall identify the successor attorney of the
17 attorney's client or, if there is none at the time notice is given, shall state the
18 client's place of residence.

19 (d) Within the first 15 days after the effective date of suspension or
20 revocation, make all arrangements for the temporary or permanent closing or
21 winding up of the attorney's practice. The attorney may assist in having others
22 take over clients' work in progress.

23 (e) Within 25 days after the effective date of suspension or revocation,
24 file with the director an affidavit showing all of the following:

25 (i) Full compliance with the provisions of the suspension or revocation
26 order and with the rules and procedures regarding the closing of the attorney's
27 practice.

28 (ii) A list of all jurisdictions, including state, federal and administrative
29 bodies, before which the attorney is admitted to practice.

30 (iii) A list of clients in all pending matters and a list of all matters pending
31 before any court or administrative agency, together with the case number of each
32 matter.

33 (f) Maintain records of the various steps taken under this rule in order
34 that, in any subsequent proceeding instituted by or against the attorney, proof of
35 compliance with the rule and with the suspension or revocation order is available.

36 (2) An attorney whose license to practice law is suspended or revoked or
37 who is suspended from the practice of law may not engage in this state in the
38 practice of law or in any law work activity customarily done by law students, law
39 clerks, or other paralegal personnel, except that the attorney may engage in law
40 related work in this state for a commercial employer itself not engaged in the
41 practice of law.

42 (3) Proof of compliance with this rule is a condition precedent to
43 reinstatement of the attorney's license to practice law.

COMMENT

SCR 22.26 has been applied to administrative suspensions. In re Disciplinary Proceedings Against Scanlan, 2006 WI 38, 290 Wis. 2d 30, 712 N.W.2d 877.³⁸

SCR 22.27 Activities of other attorneys.

(1) An attorney may not use in a firm name, letterhead or other written form the name of an attorney whose license is suspended or revoked.

(2) An attorney may not authorize or knowingly permit an attorney whose license is suspended or revoked to do any of the following:

(a) Interview clients or witnesses, except that in the course of employment by a commercial employer, the attorney may interview witnesses and participate in the investigation of claims.

(b) Prepare cases for trial.

(c) Do any legal research or other law work activity in a law office.

(d) Write briefs or trial memoranda.

(e) Perform any law related services for a member of the Wisconsin bar, either on a salary or a percentage or a fee-splitting basis, except that an attorney may share attorney fees on a quantum meruit basis only for services performed prior to suspension or revocation.

(3) An attorney may not permit an attorney whose license is suspended or revoked or who is suspended from the practice of law to engage in any activity prohibited by SCR 22.26.

(4) An attorney's failure to comply with this rule may constitute misconduct.

SCR 22.28 License reinstatement.

(1) An attorney suspended from the practice of law for nonpayment of state bar membership dues or failure to comply with the trust account certification requirement or continuing legal education requirements may seek reinstatement under the following rules, as applicable:

(a) An attorney whose suspension for nonpayment of state bar membership dues has been for a period of less than 3 consecutive years may seek reinstatement under SCR 10.03 (6m) (a).

(b) An attorney whose suspension for failure to comply with the continuing legal education requirements has been for a period of less than 3 consecutive years may seek reinstatement under SCR 31.11 (1).

(c) An attorney whose suspension for nonpayment of state bar membership dues has been for a period of 3 or more consecutive years may seek reinstatement under SCR 10.03 (6m) (b).

³⁸ Adopted 10/29/19 (Petition 19-08, Section 10).

1 (d) An attorney whose suspension for failure to comply with the
2 continuing legal education requirements has been for a period of 3 or more
3 consecutive years may seek reinstatement under SCR 31.11 (1m).

4 (e) An attorney who has been suspended for failure to comply with the
5 trust account certification requirement under SCR 20:1.15 (g) may seek
6 reinstatement under SCR 10.03 (6m) (c).

7 (2) The license of an attorney suspended for misconduct for less than six
8 months shall be reinstated by the supreme court upon the filing of an affidavit
9 with the director showing full compliance with all the terms and conditions of the
10 order of suspension and the director's notification to the supreme court of the
11 attorney's full compliance.

12 (3) The license of an attorney that is revoked or suspended for misconduct
13 for six months or more, or revoked for failure to fulfill the terms of a conditional
14 admission agreement under SCR 40.075, shall be reinstated pursuant to the
15 procedure set forth in SCR 22.29 to 22.33 and only by order of the supreme court.
16

17 **SCR 22.29 Petition for reinstatement.**

18 (1) A petition for reinstatement of a license suspended for a definite
19 period may be filed at any time commencing three months prior to the expiration
20 of the suspension period.

21 (2) A petition for reinstatement of a license that is revoked may be filed at
22 any time commencing five years after the effective date of revocation.

23 (3) A petition for reinstatement shall be filed in the supreme court. A
24 copy of the petition shall be served on the director and on the board of bar
25 examiners.

26 (3m) The petitioner shall file 9 copies of a petition for reinstatement.

27 (4) The petition for reinstatement shall show all of the following:

28 (a) The petitioner desires to have the petitioner's license reinstated.

29 (b) The petitioner has not practiced law during the period of suspension or
30 revocation.

31 (c) The petitioner has complied fully with the terms of the order of
32 suspension or revocation and will continue to comply with them until the
33 petitioner's license is reinstated.

34 (d) The petitioner has maintained competence and learning in the law by
35 attendance at identified educational activities.

36 (e) The petitioner's conduct since the suspension or revocation has been
37 exemplary and above reproach.

38 (f) The petitioner has a proper understanding of and attitude toward the
39 standards that are imposed upon members of the bar and will act in conformity
40 with the standards.

41 (g) The petitioner can safely be recommended to the legal profession, the
42 courts and the public as a person fit to be consulted by others and to represent

1 them and otherwise act in matters of trust and confidence and in general to aid in
2 the administration of justice as a member of the bar and as an officer of the courts.

3 (h) The petitioner has fully complied with the requirements set forth in
4 SCR 22.26.

5 (j) The petitioner's proposed use of the license if reinstated.

6 (k) A full description of all of the petitioner's business activities during
7 the period of suspension or revocation.

8 (4m) The petitioner has made restitution to or settled all claims of persons
9 injured or harmed by petitioner's misconduct, including reimbursement to the
10 Wisconsin lawyers' fund for client protection for all payments made from that
11 fund, or, if not, the petitioner's explanation of the failure or inability to do so.

12
13 **COMMENT**

14 An attorney seeking reinstatement of a suspended or revoked license is
15 required to reimburse the Fund for any payments made to injured clients as a
16 result of the attorney's conduct, or to explain why this is not possible. Fund
17 payment to a client signifies that the lawyer's dishonest conduct caused a loss that
18 was restored through an assessment against all members of the bar. The attorney
19 responsible should be required to reimburse the Fund before resuming practice.
20 In cases where the attorney demonstrates that he or she cannot make full
21 restitution to injured clients and to the Fund, the Fund will defer its right to
22 reimbursement until the clients have been made whole.

23
24 (4x) At the time that the petitioner serves a copy of the petition for
25 reinstatement on the director, the petitioner shall also submit to the director a
26 completed reinstatement questionnaire.³⁹

27
28 **COMMENT**

29
30 A blank copy of the reinstatement questionnaire may be obtained from the
31 office of lawyer regulation. The questionnaire is used by the office of lawyer
32 regulation to assist in its investigation. The questionnaire is not to be filed with
33 the court.⁴⁰

34
35 (5) A petition for reinstatement shall be accompanied by an advance
36 deposit in an amount to be set by the supreme court for payment of all or a portion
37 of the costs of the reinstatement proceeding. The supreme court may extend the
38 time for payment or waive payment in any case in which to do otherwise would
39 result in hardship or injustice.

³⁹ Adopted 9/16/19 (Petition 19-06).

⁴⁰ Adopted 9/16/19 (Petition 19-06).

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SCR 22.30 — Reinstatement procedure.

~~(1) The clerk or deputy clerk of the supreme court shall select an available referee from the panel provided in SCR 21.08, based on availability and geographic proximity to the location of the petitioner's place of residence, and the chief justice or, in his or her absence, the senior justice chief justice's delegee shall issue an order appoint appointing the referee selected by the clerk or deputy clerk to conduct a hearing on the petition for reinstatement. In the case of a license suspension, the hearing shall not be held prior to the expiration of the period of suspension. 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.⁴¹~~

~~(2) The director shall investigate the eligibility of the petitioner for reinstatement and file a response with the referee in support of or in opposition to the petition within the time period ordered by the referee.~~

~~(2m) The board of bar examiners shall determine the attendance and reporting requirements of the petitioner as required by SCR 31.06 and file a report with the referee within the time period ordered by the referee.~~

~~(3) At least 30 days prior to the hearing, the director shall publish a notice in a newspaper of general circulation in any county in which the petitioner maintained an office for the practice of law prior to suspension or revocation and in the county of the petitioner's residence during the suspension or revocation and in an official publication of the state bar of Wisconsin.~~

~~(4) The notice under sub. (3) shall contain a brief statement of the nature and date of suspension or revocation, the matters required to be proved for reinstatement, and the date, time and location of the hearing on the petition.⁴²~~

SCR 22.30 Reinstatement Procedure.

(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]⁴³ 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:

⁴¹ Amendments adopted by S. Ct. Order 19-04, 2019 WI 77 (issued June 26, 2019, eff. July 1, 2020). (Petition 19-04), subsequently repealed and recreated by amendments adopted 9/16/19 (Petition 19-06).

⁴² Repealed and recreated 9/16/19 (Petition 19-06).

⁴³ This provision remains subject to review.

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

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

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

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

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

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

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

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

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

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

40 (4) Within 75 days after the filing of the petition, the director shall
41 investigate the eligibility of the petitioner for reinstatement and shall file with the
42 court a response to the petition stating whether the petitioner has demonstrated to
43 the director satisfaction of all of the criteria for reinstatement or the director
44 opposes the petition. Upon motion of the director or the petitioner for good cause

1 shown, the court may grant the director an extension of time to complete the
2 investigation and file the response to the petition.

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

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

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

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

38 (6)(a) If the director opposes the petition for reinstatement, the clerk or
39 deputy clerk of the supreme court shall select an available referee from the panel
40 provided in SCR 21.08, based on the location of the petitioner's place of
41 residence. The chief justice or, in his or her absence, the chief justice's delegee
42 shall issue an order appointing the referee selected by the clerk or deputy to

1 conduct a hearing and prepare a report on the petition for reinstatement.⁴⁴

2 (b) [The referee shall have the powers of a judge trying a civil action and
3 shall conduct the proceedings regarding the petition pursuant to the rules of civil
4 procedure, except where these rules provide a different procedure.]⁴⁵

5 (c) Following the appointment of a referee, the parties shall file all papers
6 and pleadings with the supreme court and serve a copy on the referee.

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

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

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

20 (g) The reinstatement hearing shall be public.

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

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

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

30
31 **SCR 22.31—Reinstatement hearing.**⁴⁶

32 (1) The petitioner has the burden of demonstrating, by clear, satisfactory,
33 and convincing evidence, all of the following:

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

⁴⁴ Adopted 9/16/19 (Petition 19-06) and modified to comport with changes adopted by S. Ct. Order 19-04, 2019 WI 77 (issued June 26, 2019, eff. July 1, 2020).

⁴⁵ This provision remains subject to review.

⁴⁶ Repealed 9/16/19 (Petition 19-06).

1 (b) That his or her resumption of the practice of law will not be
2 detrimental to the administration of justice or subversive of the public interest.

3 (c) That his or her representations in the petition, including the
4 representations required by SCR 22.29(4)(a) to (m) and 22.29(5), are
5 substantiated.

6 (d) That he or she has complied fully with the terms of the order of
7 suspension or revocation and with the requirements of SCR 22.26.

8 (2) The reinstatement hearing shall be public.

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

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

13 (5) The hearing shall be conducted pursuant to the rules of civil
14 procedure. The rules of evidence shall not apply, and the referee may consider
15 any relevant information presented. Interested persons may present information
16 in support of or in opposition to reinstatement.

17
18 **SCR 22.305 Standard for Reinstatement.** At all times relevant to the
19 petition, the petitioner has the burden of demonstrating, by clear, satisfactory, and
20 convincing evidence, all of the following:

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

22 (2) That his or her resumption of the practice of law will not be
23 detrimental to the administration of justice or subversive of the public interest.

24 (3) That his or her representations in the petition, including the
25 representations required by SCR 22.29(4)(a) to (m) and 22.29(5), are
26 substantiated.

27 (4) That he or she has complied fully with the terms of the order of
28 suspension or revocation and with the requirements of SCR 22.26.⁴⁷

29
30 **SCR 22.32 Report of the referee; response.**

31 (1) Within 30 days after the conclusion of the hearing or the filing of the
32 hearing transcript, whichever is later, the referee shall file in the supreme court a
33 report setting forth findings and a recommendation on the petition for
34 reinstatement.

35 (2) Within 10 days after the filing of the referee's report, the petitioner
36 and the director may file in the supreme court a response to the report.

37
38 **SCR 22.33 Review; appeal.**

39 (1) The director or the petitioner may file in the supreme court an appeal
40 from the referee's report within 20 days after the filing of the report.

⁴⁷ Adopted 9/16/19 (Petition 19-06).

1 (2) An appeal from the report of the referee is conducted under the rules
2 governing civil appeals to the supreme court. The supreme court shall place the
3 appeal on its first assignment of cases after the briefs are filed.

4 (3) If no appeal is timely filed, the supreme court shall review the
5 referee's report, order reinstatement, with or without conditions, deny
6 reinstatement, or order the parties to file briefs in the matter.

7 (4) If the supreme court denies a petition for reinstatement, the petitioner
8 may again file a petition for reinstatement commencing nine months after the
9 denial.

10
11 **COMMENT**

12 **Costs regarding the petition for reinstatement may be assessed against the**
13 **petitioner, as provided in SCR 22.24.⁴⁸**

14
15 **ATTORNEY MEDICAL INCAPACITY**

16
17 **SCR 22.34 Medical incapacity proceedings.**

18 (1) An attorney's license to practice law may be suspended indefinitely or
19 conditions may be imposed on the attorney's practice of law upon a finding that
20 the attorney has a medical incapacity.

21 (2) The director shall investigate any matter that presents sufficient
22 information to support an allegation of possible medical incapacity.

23 (3) The respondent shall cooperate with the investigation by providing
24 medical releases necessary for the review of medical records relevant to the
25 allegations.

26 (4) The investigation shall be conducted in confidence.

27 (5) The director shall prepare an investigative report and send a copy of it
28 to the respondent. The respondent may submit to the director a written response
29 to the investigative report within 10 days after receipt of the report.

30 (6) Upon completion of an investigation, the director may do one or more
31 of the following:

32 (a) Dismiss the matter for lack of sufficient evidence to believe the
33 attorney has a medical incapacity.

34 (b) Present the matter to the preliminary review committee for a
35 determination that there is cause to proceed in the matter.

36 (7) The director shall submit to the preliminary review panel the
37 investigative report, including an outline of the factual allegations and all exhibits,
38 and the respondent's response, if any.

39 (8) If the preliminary review panel determines that the director has
40 established cause to proceed, the director shall file a petition with the supreme
41 court for the suspension of the respondent's license to practice law or the
42 imposition of conditions on the respondent's practice of law. A determination of

⁴⁸ Adopted 9/16/19 (Petition 19-06).

1 cause to proceed shall be by the affirmative vote of 4 or more members of the
2 panel and does not constitute a finding that there is clear, satisfactory, and
3 convincing evidence of an attorney's medical incapacity.

4 (9) The procedures under SCR 22.11 to 22.24 for a disciplinary
5 proceeding are applicable to a medical incapacity proceeding, except as otherwise
6 expressly provided. The office of lawyer regulation has the burden of
7 demonstrating by clear, satisfactory and convincing evidence that the respondent
8 has a medical incapacity.

9 (10) The petition may be accompanied by a stipulation of the director and
10 the respondent to a suspension or to the imposition of conditions on the
11 respondent's practice of law. The supreme court may consider the petition and
12 stipulation without the appointment of a referee. If the supreme court approves
13 the stipulation, it shall issue an order consistent with the stipulation. If the
14 supreme court rejects the stipulation, the clerk or deputy clerk of the supreme
15 court shall select a an available referee from the panel provided in SCR 21.08,
16 based on availability and geographic proximity to the location of the respondent's
17 place of residence, ~~the~~ The chief justice or, in his or her absence, the ~~senior~~
18 ~~justice~~ chief justice's delegee shall issue an order appoint appointing the referee
19 selected by the clerk or deputy clerk, and the matter shall proceed as a petition
20 filed without a stipulation. A stipulation rejected by the supreme court has no
21 evidentiary value and is without prejudice to the respondent's defense of the
22 proceeding or the prosecution of the petition.⁴⁹

23 (11)(a) An attorney who is the subject of an investigation or petition for
24 possible medical incapacity may request the indefinite suspension of the
25 attorney's license to practice law. The request shall state that it is filed because
26 the petitioner cannot successfully defend against the allegations of medical
27 incapacity. A request for suspension shall be filed with whichever of the
28 following is applicable:

29 1. Prior to the filing of a petition by the director, a request for suspension
30 shall be filed in the supreme court and include the director's summary of the
31 medical incapacity allegations being investigated. Within 20 days after the filing
32 of the request, the director shall file with the supreme court a response in support
33 of or in opposition to the request.

34 2. After the director has filed a petition, the request for suspension shall
35 be filed in the supreme court and served on the director and the referee to whom
36 the matter is assigned. Within 20 days after the filing of the request, the director
37 shall file a response in support of or in opposition to the request. The referee shall
38 file a report and recommendation with the supreme court within 30 days after the
39 filing of the director's response.

⁴⁹ Adopted by S. Ct. Order 19-04, 2019 WI 77 (issued June 26, 2019, eff. July 1, 2020). (Rule Petition 19-04).

1 (b) The supreme court shall grant the request and suspend indefinitely the
2 attorney's license to practice law or deny the request and remand the matter to the
3 director or to the referee for further proceedings.

4 (12) All papers, files, transcripts, communications and proceedings shall
5 be confidential and shall remain confidential ~~until the supreme court has issued an~~
6 ~~order revoking, suspending indefinitely, or imposing conditions on the attorney's~~
7 ~~license to practice law, except as provided in sub. (12m) and except that~~
8 ~~acknowledgement that a proceeding is pending and notification to another court~~
9 ~~before which a similar petition is pending may be made when considered~~
10 ~~necessary by the director and that any publication the supreme court considers~~
11 ~~necessary may be made.~~⁵⁰

12 (12m) Following the issuance by the supreme court of an order revoking,
13 suspending indefinitely, or imposing conditions on the attorney's license to
14 practice law, the petition and all papers relating to the petition that are filed with
15 the supreme court are public information.⁵¹

16 (13) The referee may order the examination of the respondent by qualified
17 medical or psychological experts and may appoint counsel to represent the
18 respondent.

19 (15m) Following appointment of a referee, the parties shall file all papers
20 and pleadings with the supreme court and serve a copy of those documents on the
21 referee.

22
23 **SCR 22.341 Review; appeal.**

24 (1) The director, or the respondent, may file an appeal of the referee's
25 report with the supreme court within 20 days after the report is filed.

26 (2) If no appeal is timely filed, the supreme court shall review the report of
27 the referee and order the suspension of the respondent's license to practice law,
28 the imposition of conditions on the respondent's practice of law, or other
29 appropriate action. The court may order the parties to file briefs in the matter.

30 (3) An appeal from the report of a referee is conducted under the rules
31 governing civil appeals to the supreme court. The supreme court shall place the
32 appeal on its first assignment of cases after the briefs are filed.

33
34 **SCR 22.35 Medical incapacity determined by a court.**

35 A court finding an attorney mentally ill, drug dependent or an alcoholic
36 under Wis. Stat. chapter 51 (1997-98) or an incompetent or spendthrift under Wis.
37 Stat. chapter 880 (1997-98) shall immediately file a copy of the findings and order
38 with the supreme court and the director. The supreme court shall order the
39 attorney to show cause why the attorney's license to practice law should not be

⁵⁰ Adopted 9/16/19 (Petition 19-07).

⁵¹ Adopted 9/16/19 (Petition 19-07).

1 suspended by reason of medical incapacity. If cause satisfactory to the court is
2 not shown, the court shall suspend the attorney's license to practice law for an
3 indefinite period. The procedure set forth in this chapter for medical incapacity
4 proceedings does not apply to this rule.
5

6 **SCR 22.36 Reinstatement; removal of conditions.**

7 (1) An attorney whose license to practice law is suspended or whose
8 practice of law is subject to conditions for medical incapacity may petition the
9 supreme court at any time for reinstatement of the license or the removal of
10 conditions.

11 (2) The supreme court shall refer the petition to the director for
12 investigation to determine whether the attorney's medical incapacity has been
13 removed.

14 (3) The filing of a petition for reinstatement constitutes a waiver of any
15 privilege existing between the petitioner and any psychiatrist, psychologist,
16 physician or other health care provider that has provided care to the attorney. The
17 petitioner shall disclose the name of every psychiatrist, psychologist, physician
18 and other health care provider that has provided care following suspension or the
19 imposition of conditions and shall furnish the director written consent to the
20 release of information and records requested by the medical experts appointed by
21 the director or a referee.

22 (4) The director may direct a medical or psychological examination of the
23 petitioner by such qualified experts as the director designates and may direct that
24 the expense of the examination be paid by the petitioner.

25 (5) Following the investigation, the petition shall be submitted to a referee,
26 selected by the The clerk or deputy clerk of the supreme court shall select an
27 available referee from the panel provided in SCR 21.08, based on geographic
28 proximity to the location of the respondent's place of residence, and appointed by
29 the chief justice or, in his or her absence, the senior justice chief justice's delegee
30 shall issue an order appointing the referee selected by the clerk or deputy clerk to
31 review the petition.⁵²

32 (6) The petitioner has the burden of showing by clear, satisfactory and
33 convincing evidence that the medical incapacity has been removed and that the
34 petitioner is fit to resume the practice of law, with or without conditions.

35 (7) The referee shall hold a hearing on the petition, if necessary, and file a
36 report and recommendation in the supreme court.

37 (8) If an attorney whose license to practice law has been suspended for
38 medical incapacity pursuant to SCR 22.35 is thereafter judicially declared to be
39 no longer in the condition previously determined under Wis. Stat. chapter 51 or

⁵² Adopted by S. Ct. Order 19-04, 2019 WI 77 (issued June 26, 2019, eff. July 1, 2020). (Rule Petition 19-04).

1 chapter 880 (1997-98), the supreme court may direct reinstatement of the
2 attorney's license, with or without conditions.

3
4 **GENERAL PROVISIONS**

5
6 **SCR 22.37 Time limitations.**

7 Time limitations set forth in this chapter are directory and not
8 jurisdictional except as otherwise provided in SCR chapter 21 and this chapter.

9
10 **SCR 22.38 Standard of proof.**

11 Allegations of misconduct in a complaint, allegations of medical
12 incapacity in a petition, **allegations of noncompliance with an order of the**
13 **supreme court issued in a disciplinary proceeding,**⁵³ and character and fitness to
14 practice law shall be established by evidence that is clear, satisfactory and
15 convincing.

16
17 **SCR 22.39 Burden of proof.**

18 (1) Subject to the exceptions identified in SCR 22.39(2), the director, or a
19 special investigator acting under SCR 22.25, has the burden of proof in
20 proceedings seeking discipline for misconduct or license suspension or the
21 imposition of conditions for medical incapacity.

22 (2) A lawyer's failure to promptly deliver trust property to a client or 3rd
23 party entitled to the property, or promptly submit trust or fiduciary account
24 records to the office of lawyer regulation, or promptly provide an accounting of
25 trust or fiduciary property to the office of lawyer regulation, shall result in a
26 presumption that the lawyer has failed to hold trust or fiduciary property in trust,
27 contrary to SCR 20:1.15(b)(1) or SCR 20:1.15(k)(1). This presumption may be
28 rebutted by the lawyer's production of records or an accounting that overcomes
29 this presumption by clear, satisfactory, and convincing evidence.

30 (3) In proceedings seeking license reinstatement, readmission to the
31 practice of law, removal of a medical incapacity, removal of conditions imposed
32 on the practice of law, and discipline different from that imposed in another
33 jurisdiction, the proponent has the burden of proof.

34
35 **WISCONSIN COMMENT**

36 While the director of the office of lawyer regulation or a special
37 investigator appointed by the director pursuant to SCR 22.25 has the burden of
38 proving misconduct in most circumstances, par. (2) establishes a rebuttable
39 presumption of certain violations based solely upon a lawyer's failure to deliver
40 property, produce records or provide accountings. The conduct that will lead to
41 the presumptions of a violation, and the rules to which the presumptions relate are
42 as follows:

⁵³ Adopted 10/29/19 (Petition 19-09).

1 (1) A lawyer's failure to comply with the delivery requirements of SCR
2 20:1.15(e)(1) will result in a presumption that the lawyer has failed to hold
3 property in trust, contrary to SCR 20:1.15(b)(1).

4 (2) A lawyer's failure to comply with the record production requirements
5 of SCR 20:1.15(g)(2) or SCR 20:1.15(k)(8) will result in a presumption that the
6 lawyer has failed to hold trust or fiduciary property in trust, contrary to SCR
7 20:1.15(b)(1) or SCR 20:1.15(k)(1).

8 (3) A lawyer's failure to comply with the accounting requirements of SCR
9 20:1.15(e)(2) or SCR 20:1.15(k)(9) will result in a presumption that the lawyer
10 has failed to hold trust or fiduciary property in trust, contrary to SCR
11 20:1.15(b)(1) or SCR 20:1.15(k)(1). See, In re Trust Estate of Martin, 39 Wis. 2d
12 437, 159 N.W.2d 660 (1968).

13
14 **SCR 22.40 Confidentiality.**

15 (1) ~~Prior to the filing of a misconduct complaint, medical incapacity~~
16 ~~petition, or petition for temporary license suspension~~Except as provided in SCR
17 22.21(2), all papers, files, transcripts, and communications in any matter relating
18 to an allegation of attorney misconduct involving the office of lawyer regulation
19 are to be held in confidence by the director and staff of the office of lawyer
20 regulation, the members of the district committees, special investigators, the
21 members of the special preliminary review panel, and the members of the
22 preliminary review committee. Following the filing of a complaint or petition, the
23 proceeding and all papers filed in it are public, except where expressly provided
24 otherwise in this chapter or by law.⁵⁴

25 (2) The director may provide relevant information to the respondent, to
26 the grievant, to an appropriate authority for the appointment of judges, to other
27 attorney or judicial disciplinary agencies, to other jurisdictions investigating
28 qualifications for admission to practice, and to law enforcement agencies
29 investigating qualifications for government employment. The supreme court may
30 authorize the release of confidential information to other persons or agencies.

31 (3) The director may provide relevant information to a district attorney or
32 U.S. attorney where there is substantial evidence of an attorney's possible criminal
33 conduct.

34 (4) If there is publicity concerning the fact that an attorney is the subject
35 of an investigation or disciplinary or medical incapacity proceeding, the director
36 may issue an explanatory statement. If there is publicity concerning alleged
37 misconduct or medical incapacity of an attorney and it is determined that there is
38 no basis for further proceedings and there is no recommendation of discipline, the
39 director may issue an explanatory statement.

40 (5) In order to provide guidance to the bar, the director may provide the
41 state bar of Wisconsin a summary of facts and violations of the rules of
42 professional conduct for attorneys in a matter in which a private reprimand has

⁵⁴ Adopted 9/16/19 (Petition 19-07).

1 been imposed. The summary shall be published in an official publication of the
2 state bar of Wisconsin but may not disclose information identifying the attorney
3 reprimanded.

4 (6) The director may provide relevant information to the supreme court
5 when seeking the temporary suspension of an attorney's license.

6 (7) The director may provide relevant information to a state bar lawyer
7 assistance program when making a referral pursuant to SCR 21.03(9).
8

9 **SCR 22.41 Pending litigation.**

10 Neither the director nor a referee may defer, except for cause, a matter or
11 proceeding because of substantial similarity to the material allegations of pending
12 criminal or civil litigation.
13

14 **SCR 22.42 Subpoena.**

15 (1) In any matter under investigation, the director, district committee, or a
16 special investigator acting under SCR 22.25, may require the attendance of
17 lawyers and witnesses and the production of documentary evidence. A subpoena
18 issued in connection with a confidential investigation must so indicate on its face.
19 It is not a breach of confidentiality for a person subpoenaed to consult with an
20 attorney.

21 (2) In any disciplinary proceeding before a referee, the director, or the
22 director's counsel, a special investigator acting under SCR 22.25, and the
23 respondent or counsel for the respondent may require the attendance of witnesses
24 and the production of documentary evidence. The use of subpoenas for discovery
25 in a matter pending before a referee shall be pursuant to an order of the referee.
26 The service, enforcement, or challenge to any subpoena issued under this rule
27 shall be governed by ch. 885, stats., except as otherwise provided in this chapter.

28 (2m) (a) The director may issue a subpoena under this chapter to compel
29 the attendance of witnesses and the production of documents in Wisconsin, or
30 elsewhere as agreed by the witnesses, if a subpoena is sought in Wisconsin under
31 the law of another jurisdiction for use in a lawyer discipline or disability
32 investigation or proceeding in that jurisdiction, and the application for issuance of
33 the subpoena has been approved or authorized under the law of that jurisdiction.

34 (b) In a lawyer discipline or disability investigation or proceeding in this
35 jurisdiction, the director, special investigator, or respondent may apply for the
36 issuance of a subpoena in another jurisdiction, under the rules of that jurisdiction
37 when the application is in aid or defense of the investigation or proceeding, and
38 the director, special investigator, or respondent could issue compulsory process or
39 obtain formal prehearing discovery under this chapter.

40 (3) A referee may enforce the attendance of a witness and the production
41 of documentary evidence.

42 (4) The referee shall rule on a challenge to the validity of a subpoena. If a
43 referee has not been assigned to the matter, a challenge to a subpoena issued by

1 the director shall be filed with the supreme court together with a petition for the
2 appointment of a referee to rule on the challenge.

3 (5) Subpoena and witness fees and mileage are allowable and paid as
4 provided in Wis. Stat. §§ 885.05 and 885.06(2). A witness subpoenaed during an
5 investigation shall be paid subpoena fees and mileage by the person requesting the
6 subpoena. A witness subpoenaed to appear at a disciplinary or medical incapacity
7 hearing before the referee shall be paid subpoena fees and mileage by the party on
8 whose behalf the witness appears.

9
10 **SCR 22.43 Cooperation of district attorney.**

11 Upon request, a district attorney shall assist and provide relevant
12 information to the director in the investigation of possible attorney misconduct.

13
14 **SCR 22.44 Retention of records.**

15 Records of all matters in which a complaint or petition is filed with the
16 supreme court or in which discipline is imposed shall be retained for at least 10
17 years. Records of all other matters shall be retained for at least three years.

18
19 **SCR 22.45 Expungement of records.**

20 (1) Records of matters that are closed without investigation or dismissed
21 shall be expunged from the files of the office of lawyer regulation three years
22 following the end of the year in which the closure or dismissal occurred.

23 (2) Upon written application to the board of administrative oversight, for
24 good cause, and with written notice to the attorney and opportunity for the
25 attorney to respond, the director may request that records that otherwise would be
26 expunged under sub. (1) be retained for such additional period not to exceed three
27 years as the board considers appropriate. The director may request further
28 extensions of the period of retention when a previous request has been granted.

29 (3) The attorney who was the subject of a matter or proceeding
30 commenced under this chapter shall be given prompt written notice of the
31 expungement of the record of the matter or proceeding.

32 (4) The effect of expungement is that the matter or proceeding shall be
33 considered never to have been commenced. In response to a general or specific
34 inquiry concerning the existence of a matter or proceeding the record of which
35 has been expunged, the director shall state that no record of the matter or
36 proceeding exists. In response to an inquiry about a specific matter or proceeding
37 the record of which has been expunged, the attorney who was the subject of the
38 matter or proceeding may state that the matter or proceeding was closed or
39 dismissed and that the record of the matter or proceeding was expunged pursuant
40 to this rule. No further response to an inquiry into the nature or scope of a matter
41 or proceeding the record of which has been expunged need be made by the
42 director or by the attorney.

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44

CHARACTER AND FITNESS INVESTIGATIONS

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SCR 22.46 Character and fitness investigations of bar admission applicants.

(1) Upon request of the board of bar examiners, the director shall investigate the character and fitness of an applicant for admission to the bar.

(2) In the investigation, the applicant shall make a full and fair disclosure of all facts and circumstances pertaining to questions involving the applicant's character and fitness. Failure to provide information or misrepresentation in a disclosure constitutes grounds for denial of admission.

SCR 22.47 Investigative Report.

The director shall report the result of each investigation to the board of bar examiners.

SCR 22.48 Costs.

The director may assess all or part of the costs of the investigation against the applicant. The director may waive payment of costs in any case in which to do otherwise would result in hardship or injustice.