

- 1 (a) Violation or attempted violation of SCR chapter 20 - rules of
- 2 professional conduct for attorneys, knowingly assisting or inducing another to do
- 3 so, or doing so through the acts of another.
- 4 (b) Failure to cooperate in the investigation of a grievance.
- 5 (c) Engaging in prohibited conduct in respect to an attorney whose license
- 6 to practice law is suspended or revoked.
- 7 (d) Commission of a criminal act that reflects adversely on an attorney's
- 8 honesty, trustworthiness or fitness as an attorney in other respects.
- 9 (e) Engaging in conduct involving dishonesty, fraud, deceit or
- 10 misrepresentation.
- 11 (f) Stating or implying an ability to influence improperly a government
- 12 agency or official.
- 13 (g) Knowingly assisting a judge or judicial officer in conduct that is a
- 14 violation of applicable rules of judicial conduct or other law.
- 15 (h) Violation of a statute, supreme court rule, supreme court order or
- 16 supreme court decision regulating the conduct of lawyers.
- 17 (j) Violation of the attorney's oath.
- 18 (9m) "Public member" means an individual who is eligible to vote in the
- 19 state of Wisconsin, but who is not a member of the state bar of Wisconsin.
- 20 (10) "Respondent" means an attorney alleged in a grievance or in a
- 21 complaint to have engaged in misconduct or alleged in a grievance or in a petition
- 22 to have a medical incapacity.

COMMENT

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26 In exercising its discretion, the office of lawyer regulation considers factors
27 such as the de minimus nature of a violation, whether the attorney acknowledges
28 the violation, whether the violation caused harm, whether the attorney has
29 remediated any harm, and whether the violation is part of a pattern of misconduct
30 or is repeated misconduct.

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32 **ATTORNEY CONDUCT**

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34 **SCR 22.01 Inquiries and grievances.**

35 Any person may make an inquiry or a grievance to the office of lawyer
36 regulation concerning the conduct of an attorney. Inquiries and grievances, except
37 those from incarcerated persons, may be made by telephone. The staff may assist
38 the person making an inquiry or a grievance in clearly stating the inquiry or
39 grievance. If assistance is given, staff may send the person making the inquiry or
40 grievance a written statement, and if it accurately sets forth the inquiry or grievance,
41 the person shall sign it and return it to the office of lawyer regulation.

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1 **SCR 22.02 Intake.**

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

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

6 (a) Forward the matter to another agency.

7 (b) Attempt to reconcile the matter between the grievant and the attorney if
8 it is a minor dispute.

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

11 (d) Refer the matter to the director with a recommendation that the matter
12 be investigated by staff ~~or~~ diverted, or resolved by a consensual reprimand.¹

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

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

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

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

30 (a) Close the matter for lack of an allegation of possible misconduct or
31 medical incapacity or lack of sufficient information of cause to proceed. The
32 director shall ~~notify~~ provide to the grievant written notice of the decision to close,
33 accompanied by a brief written statement of reasons for the director's decision. The
34 notice shall inform the grievant in writing³ that the grievant may obtain review by
35 a preliminary review panel of the director's closure by submitting a written request
36 to the director. The request for review must be received by the director within 30
37 days after the date of the letter notifying the grievant of the closure. The director
38 shall send the request for review to the chairperson of the preliminary review

¹ Adopted 10/29/19 (Petition 19-08, Section 4).

² Adopted 12/9/19 (Petition 19-11, Section 1); “he or she” used in petition changed to “the director” in final review.

³ Adopted 12/9/19 (Petition 19-11, Section 2).

1 committee, who shall assign it to a preliminary review panel. Upon a timely request
2 by the grievant for additional time, the director shall report the request to the
3 chairperson of the preliminary review committee, who may extend the time for
4 submission of additional information relating to the request for review.

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

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

9 ~~(d) Resolve the matter with a consensual reprimand as provided by~~
10 ~~SCR 22.09.⁴~~

11 ~~(e) Obtain the respondent’s consent to the imposition of a public or private~~
12 ~~reprimand and proceed under SCR 22.09.⁵~~

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15 **SCR 22.03 Investigation.**

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

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

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

29 ~~(4) If the respondent fails to respond to the request for written response to~~
30 ~~an allegation of misconduct or fails to cooperate in other respects in an~~
31 ~~investigation, the director, or a special investigator acting under SCR 22.25, may~~
32 ~~file a motion with the supreme court requesting that the court order the respondent~~
33 ~~to show cause why his or her license to practice law should not be suspended for~~
34 ~~willful failure to respond or cooperate with the investigation. All papers, files,~~
35 ~~transcripts, communications, and proceedings on the motion shall be confidential~~

⁴ Adopted 10/29/19 (Petition 19-08, Section 5). This provision will be deleted because it is duplicative of language created on 12/9/19 from Petition 19-11.

⁵ Created 12/9/19 (Petition 19-11, Section 3). This language is duplicative of language adopted 10/29/19 as part of 19-08. The language proposed in 19-11 will be used because it tracks more closely with SCR 22.09. [See email communication with Committee dated 1/3/20].

1 ~~and shall remain confidential until the supreme court has issued an order to show~~
2 ~~cause. The license of an attorney suspended for willful failure to respond or~~
3 ~~cooperate with an investigation may be reinstated by the supreme court upon a~~
4 ~~showing of cooperation with the investigation and compliance with the terms of~~
5 ~~suspension. The director or the special investigator shall file a response in support~~
6 ~~of or in opposition to the reinstatement within 20 days after the filing of an~~
7 ~~attorney's request for reinstatement. Upon a showing of good cause, the supreme~~
8 ~~court may extend the time for filing a response.~~⁶
9

10 (4)(a) If respondent fails fully and fairly to disclose all facts and
11 circumstances pertaining to the alleged misconduct within the deadline established
12 pursuant to par. (2), including any extension granted by the director or special
13 investigator, or fails to cooperate in other respects with an investigation, the director
14 or special investigator shall notify respondent by personal service or alternative
15 method permitted by SCR 22.13(1)⁷ that respondent’s license to practice law will
16 be automatically suspended unless, within 20 days after receiving such personal
17 service, respondent:
18

19 1. Fully and fairly discloses all facts and circumstances pertaining to the
20 alleged misconduct or otherwise cooperates with the investigation, to the
21 reasonable satisfaction of the director or special investigator; or,
22

23 2. Submits evidence to the director or special investigator demonstrating, to
24 the reasonable satisfaction of the director or special investigator, respondent’s
25 inability to disclose the facts and circumstances or otherwise cooperate with the
26 investigation; or,
27

28 3. Files a motion with the supreme court showing cause why respondent’s
29 license to practice should not be suspended for willful failure to respond or
30 cooperate with the investigation.
31

32 (b)1. If respondent satisfies the condition of par. (a) 1., the director or
33 special investigator shall proceed with the investigation.
34

35 2. If the respondent satisfies the condition of par. (a) 2., the director or
36 special investigator may establish a new deadline for respondent to disclose fully
37 and fairly all facts and circumstances or otherwise cooperate with the investigation.
38 If respondent fails to disclose fully and fairly all facts and circumstances or
39 otherwise cooperate with the investigation, to the reasonable satisfaction of the

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

⁷Modification to allow alternate service requested by OLR and approved by Committee on 4/13/20.

1 director or special investigator, before expiration of the deadline established
2 pursuant to this par. 2, respondent’s license to practice law is automatically
3 suspended.

4
5 3. If respondent files a motion with the supreme court pursuant to par. (a) 3.,
6 the supreme court shall act upon respondent’s motion, following its own
7 procedures. All papers, files, transcripts, communications, and proceedings on the
8 motion are confidential until the supreme court has acted upon the motion. If the
9 supreme court grants respondent's motion, the record shall remain confidential. If
10 the supreme court denies respondent's motion, the record shall become public
11 information unless the supreme court, upon its discretion and for cause shown,
12 directs otherwise.⁸

13
14 (c)1. If respondent fails to satisfy any of par. (a) 1., 2., or 3., or fails to meet
15 a deadline established pursuant to par. (b) 2., or if the supreme court rejects
16 respondent’s motion submitted pursuant to par. (b) 3., respondent’s license is
17 suspended and the director shall promptly notify the state bar of Wisconsin,⁹ and
18 all judges in the state ~~send notice of the suspension as provided in SCR 22.23. to~~
19 ~~the clerk of the supreme court, all supreme court justices, all courts of appeal and~~
20 ~~circuit courts, all circuit court commissioners, all circuit court clerks, all juvenile~~
21 ~~court clerks, all registers in probate, the executive director of the state bar of~~
22 ~~Wisconsin, the Wisconsin State Public Defenders’ Office, and the clerks of the~~
23 ~~federal districts in Wisconsin.~~¹⁰

24
25 2. SCR 22.26(2) applies immediately upon suspension to a respondent
26 whose license to practice law is suspended pursuant to this Rule. If respondent's
27 suspension hereunder extends beyond 30 days, SCR 22.26 in its entirety applies to
28 the respondent beginning on the 31st day.

29
30 (d)1. Notwithstanding SCR 22.28, if, within 18 months of the date of
31 suspension pursuant to SCR 22.03(4), a respondent whose license was suspended
32 for failure to satisfy a condition of par. (a) 1. to 3., or failure to meet a deadline
33 established pursuant to par. (b) 2., discloses fully and fairly all facts and
34 circumstances pertaining to the alleged misconduct, or otherwise cooperates with
35 the investigation, to the reasonable satisfaction of the director or special
36 investigator, respondent’s license to practice law shall be automatically reinstated.
37 Upon reinstatement of a license pursuant to this subsection, the director or special
38 investigator shall promptly notify all judges in the state of such reinstatement.

⁸ Revised to ensure that confidentiality can be maintained if the court grants the respondent's motion.

⁹ Requested by OLR by email of 5/12/20.

¹⁰ Modified from the text of the petition to limit distribution.

1 ~~send notice of the costs~~
2 ~~to each person identified in par. (c) 1.~~¹¹
3

4 2. Respondent, following suspension of respondent’s license pursuant to
5 paragraph (4) and whose license was not automatically reinstated pursuant to
6 paragraph (d)1. above, may apply for reinstatement pursuant to SCR 22.28(3).¹²
7

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

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

14 (c) The director may, in the director’s discretion,¹³provide the respondent
15 a copy of the grievance and of any information supplied by the grievant that is not
16 included in the grievance. In exercising such discretion, the director shall consider:

17 1. The grievant’s interest in privacy.

18 2. The respondent’s interest in being fully informed of the basis for the
19 grievance and of any proceedings taken against him or her pursuant to the
20 grievance.

21 3. Any effect that supplying or withholding a copy of the grievance and
22 information supplied by the grievant may have upon the public interest.¹⁴

23 (6) In the course of the investigation, the respondent's willful¹⁵ failure to
24 provide relevant information, to answer questions fully, or to furnish documents
25 and the respondent's misrepresentation in a disclosure are misconduct, regardless
26 of the merits of the matters asserted in the grievance.

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

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

¹¹ The Committee recommends this modification from the text of the petition.

¹² Adopted as part of repeal and recreation of the section on 10/29/19 (Petition 19-08, Section 6).

¹³ “His or her” language from petition changed to “director” in final review.

¹⁴ Adopted 9/16/19 (Petition 19-07).

¹⁵ Spelling correction from existing language.

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SCR 22.04 Referral to district committee.

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

(2) When the director refers a matter to a committee, the respondent may make a written request for the substitution of the investigator assigned to the matter by the committee chairperson, or may provide a written waiver of the right to request substitution. The request for substitution shall be made within 14 days after receipt of notice of the assignment of the investigator. One timely request for substitution shall be granted as a matter of right. Additional requests for substitution shall be granted by the committee chairperson for good cause. When a request for substitution is granted, the investigator initially assigned shall not participate further in the matter.

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

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

(5) The director may withdraw the referral of a matter to a committee at any time, and the committee thereupon shall terminate its investigation.¹⁶

SCR 22.05 Disposition of investigation.

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

- (a) Dismiss the matter for lack of sufficient evidence of cause to proceed.
- (b) Divert the matter to an alternatives to discipline program as provided in

SCR 22.10.

¹⁶ The proposed repeal of this provision was held under advisement per 10/29/19 conference (Petition 19-08). Court voted to retain on 3/2/20.

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

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

5 (e) With the mutual consent of the attorney and the director to waive
6 presentation of the matter to the preliminary review committee, proceed in any
7 manner authorized by SCR 22.08(2).¹⁷

8 (2) ~~The~~ If the director dismisses the matter under sub. (1), the director shall
9 notify provide to the grievant in writing written notice of the decision to dismiss,
10 accompanied by a brief written statement of reasons for the director's decision. The
11 notice shall inform the grievant¹⁸ that the grievant may obtain review by a
12 preliminary review panel of the director's dismissal of a matter under sub. (1) by
13 submitting to the director a written request. The request for review must be
14 received by the director within 30 days after the date of the letter notifying the
15 grievant of the dismissal. The director shall send the request to the chairperson of
16 the preliminary review committee, who shall assign it to a preliminary review
17 panel. Upon a timely request by the grievant for additional time, the director shall
18 report the request to the chairperson of the preliminary review committee, who may
19 extend the time for submission of additional information relating to the request for
20 review.

21 (3) The preliminary review panel may affirm the dismissal or, if it
22 determines that the director has exercised the director's discretion erroneously, refer
23 the matter to the director for further investigation. A majority vote of the panel is
24 required to find that the director has exercised discretion erroneously. The panel's
25 decision is final, and there shall be no review of the panel's decision. The
26 chairperson of the preliminary review committee shall notify the grievant and the
27 respondent in writing of the panel's decision.

28
29 **SCR 22.06 Presentation to preliminary review committee.**

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

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

37 (3) The director and staff designated by the director shall appear before the
38 panel and summarize the investigative reports and the director's position in the
39 matter.

40

¹⁷ Created 12/9/19 (Petition 19-11, Section 4).

¹⁸ Amended 12/9/19 (Petition 19-11, Section 5).

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

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

4 (2) The meetings and deliberations of the panels are private and
5 confidential. The panels shall take and retain full and complete minutes of their
6 meetings.

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

12 (4) If the panel determines that the director has failed to establish cause to
13 proceed, it shall report the determination to the chairperson of the preliminary
14 review committee, who shall notify the director, the respondent, and the grievant
15 of the determination.

16
17 **SCR 22.08 Response to cause to proceed determination.**

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

24 (b) Following resubmission, if the panel determines that the director has
25 failed to establish cause to proceed, it shall report the determination to the
26 chairperson of the preliminary review committee, who shall dismiss the matter and
27 notify in writing the director, the respondent, and the grievant of the dismissal. A
28 decision of the panel on resubmission that the director has failed to establish cause
29 to proceed is final, and there is no review of that decision.

30 (c) (Repealed)

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

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

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

39 (c) File with the supreme court and prosecute a complaint alleging
40 misconduct.

41
42 **SCR 22.09 Consensual private and public reprimands.**

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

6 (2) The director shall request the appointment of a referee by providing in
7 confidence to the clerk of the supreme court the names of the grievant and
8 respondent, the address of the respondent's principal office, and the date of the
9 consent agreement. ~~The clerk or deputy clerk of the supreme court shall select a~~
10 An available referee shall be selected from the panel provided in SCR 21.08, based
11 on availability and geographic proximity to the location of the respondent's
12 principal office. The chief justice or, in his or her absence, the senior justice chief
13 justice's delegee shall appoint the referee selected by the clerk or deputy clerk.¹⁹
14 The director shall submit the agreement, accompanied by the respondent's public
15 and private disciplinary history, to the appointed referee for review and approval.
16 The director shall send a copy of the agreement to the grievant. The grievant may
17 submit a written response to the director within 30 days after being notified of the
18 agreement, and the director shall submit the response to the referee. The respondent
19 and the director may submit comments to the referee regarding the grievant's
20 response. The agreement, the grievant's response, and the comments of the
21 respondent and director shall be considered by the referee in confidence.

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

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

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

35
36 **SCR 22.10 Diversion to alternatives to discipline program.**

37 (1) *Offer of diversion.* At intake, during an investigation, or at the
38 conclusion of an investigation, if the director determines that the matter should be
39 diverted to an alternatives to discipline program, the director may offer the attorney
40 the opportunity to participate in the program. If the attorney rejects the offer, the

¹⁹ Adopted by S. Ct. Order 19-04, 2019 WI 77 (issued June 26, 2019, eff. July 1, 2020). (Petition 19-04). The changes from the petition reflect the new referee selection process.

1 matter shall proceed as otherwise provided in this chapter. Diversion to an
2 alternatives to discipline program does not constitute discipline under this chapter.

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

10 (3) *Eligibility for participation.* An attorney may participate in an
11 alternatives to discipline program when there is little likelihood that the attorney
12 will harm the public during the period of participation, when the director can
13 adequately supervise the conditions of the program, and when participation in the
14 program is likely to benefit the attorney and accomplish the goals of the program.
15 Unless good cause is shown, an attorney may not participate in an alternatives to
16 discipline program if any of the following circumstances is present:

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

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

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

22 (d) The misconduct involves family violence.

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

26 (f) The attorney has been publicly disciplined within the preceding five
27 years.

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

30 (h) The misconduct involves dishonesty, fraud, deceit, or
31 misrepresentation.

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

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

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

36
37 (4) *Diversion agreement.* If the attorney agrees to diversion to an
38 alternatives to discipline program, the terms of the diversion shall be set forth in a
39 written agreement between the attorney and the director. The agreement shall
40 specify the program to which the attorney is diverted, the general purpose of the
41 diversion, the manner in which the attorney's compliance with the program is to be
42 monitored, and the requirement, if any, for payment of restitution or costs. ~~If the~~
43 ~~diversion agreement is entered into after the director has reported the matter to the~~
44 ~~preliminary review committee, pursuant to SCR 22.06(1), the agreement shall be~~

1 submitted for approval to the preliminary review panel to which the matter has been
2 assigned. ~~If the preliminary review panel rejects the agreement, the matter shall~~
3 ~~proceed as otherwise provided in this chapter matter shall be withdrawn from the~~
4 ~~preliminary review committee.~~²⁰

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

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

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

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

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

21 (7) *Breach of diversion agreement.* ~~(a)~~²¹ If the director has reason to
22 believe that the attorney has breached a diversion agreement ~~entered into prior to a~~
23 ~~report of the matter to the preliminary review committee, pursuant to SCR 22.06(1),~~
24 the attorney shall be given the opportunity to respond, and the ~~director parties may~~
25 ~~modify the diversion agreement or the director may, in the director's sole~~
26 ~~discretion, terminate the diversion agreement and proceed with the matter as~~
27 ~~otherwise provided in this chapter.~~²²

28 ~~(b) — If the director has reason to believe that the attorney has breached a~~
29 ~~diversion agreement entered into after the matter was reported to the preliminary~~
30 ~~review committee, pursuant to SCR 22.06(1), the director shall give written notice~~
31 ~~of the facts establishing the breach to the attorney and to the preliminary review~~
32 ~~panel that approved the diversion agreement. The attorney may submit a written~~
33 ~~response to the preliminary review panel within 20 days after notice is given. The~~
34 ~~director has the burden to establish by a preponderance of the evidence the~~
35 ~~materiality of the breach; the attorney has the burden to establish by a~~
36 ~~preponderance of the evidence justification for the breach. If, after consideration of~~
37 ~~the information presented by the director and the attorney's response, if any, the~~

²⁰ Adopted 12/9/19 (Petition 19-11, Section 6); OLR proposes deleting entire sentence. Committee agrees on 4/13/20.

²¹ With deletion of (b) sub (a) is no longer needed.

²² Adopted 12/9/19 (Petition 19-11, Section 7).

1 ~~panel determines that the breach was material and without justification, the~~
2 ~~agreement shall be terminated and the matter shall proceed as otherwise provided~~
3 ~~in this chapter. If the panel determines that the breach was not material or that there~~
4 ~~was justification, the director may modify the diversion agreement in response to~~
5 ~~the breach. If the panel determines there was no breach, the matter shall proceed~~
6 ~~pursuant to the terms of the original diversion agreement.~~

7 ~~(c) If the alleged breach is referred for determination to a preliminary~~
8 ~~review panel under par. (b), upon motion of either party, a referee selected and~~
9 ~~appointed pursuant to SCR 22.13(3) shall hold a hearing on the matter. Upon~~
10 ~~conclusion of the hearing, the referee shall submit written findings of fact and~~
11 ~~conclusions of law to the panel.²³~~

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

18
19 **SCR 22.11 Initiation of proceeding.**

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

23 (2) ~~(a) The~~ Except as provided in sub. (b) or (c), complaint shall set forth
24 only those facts and misconduct allegations for which the preliminary review panel
25 determined there was cause to proceed, ~~and~~ The complaint may set forth the
26 discipline or other disposition sought. ~~Facts and misconduct allegations arising~~
27 ~~under SCR 22.20 and SCR 22.22 may be set forth in a complaint without a~~
28 ~~preliminary review panel finding of cause to proceed.²⁴~~

29 (b) A complaint may set forth facts and misconduct allegations arising
30 under SCR 22.20 and SCR 22.22 without a preliminary review panel finding of
31 cause to proceed.²⁵

32 (c) A complaint may set forth facts and misconduct allegations without a
33 preliminary review panel finding of cause to proceed if presentation to the
34 preliminary review committee is waived under SCR 22.05(1)(e).²⁶

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

37 (4) The complaint shall be entitled: In the Matter of Disciplinary
38 Proceedings Against [name of respondent], Attorney at Law; Office of Lawyer

²³ Repealed 12/9/19 (Petition 19-11, Section 8).

²⁴ Adopted 12/9/19 (Petition 19-11, Section 9).

²⁵ Created 12/9/19 (Petition 19-11, Section 10).

²⁶ Created 12/9/19 (Petition 19-11, Section 11).

1 Regulation, Complainant; [name of respondent], Respondent. The complaint shall
2 be captioned in the supreme court and contain the name and residence address of
3 the respondent or the most recent address furnished by the respondent to the state
4 bar.

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

7 **SCR 22.12 Stipulation.**

8 (1) The director may file with the complaint a stipulation of the director
9 and the respondent to the facts, conclusions of law regarding misconduct, and
10 discipline to be imposed, together with a memorandum in support of the stipulation.
11 The respondent may file a response to the Director's memorandum within 14 days
12 of the date of filing of the stipulation. The supreme court may consider the
13 complaint and stipulation without the appointment of a referee, in which case the
14 supreme court may approve the stipulation, reject the stipulation, or direct the
15 parties to consider specific modifications to the stipulation.²⁷

16 (2) If the supreme court approves a stipulation, it shall adopt the
17 stipulated facts and conclusions of law and impose the stipulated discipline.

18 (3) If the supreme court rejects a stipulation, a referee shall be appointed
19 and the matter shall proceed as a complaint filed without a stipulation.

20 (3m) If the supreme court directs the parties to consider specific
21 modifications to the stipulation, the parties may, within 20 days of the date of the
22 order, file a revised stipulation, in which case the supreme court may approve the
23 revised stipulation, adopt the stipulated facts and conclusions of law, and impose
24 the stipulated discipline. If the parties do not file a revised stipulation within 20
25 days of the date of the order, a referee shall be appointed and the matter shall
26 proceed as a complaint filed without a stipulation.

27 (4) A stipulation rejected by the supreme court has no evidentiary value and
28 is without prejudice to the respondent's defense of the proceeding or the prosecution
29 of the complaint.

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

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

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

²⁷ Adopted 9/16/19 (Petition 19-06).

1 (3) Except as provided in SCR 22.12, upon receipt of proof of service of
2 the complaint, ~~the clerk or deputy clerk of the supreme court shall select a~~an
3 available referee shall be selected from the panel provided in SCR 21.08, based on
4 ~~the availability and geographic proximity to the location of~~ the respondent's
5 principal office, ~~and the~~ The chief justice or, in his or her absence, the ~~senior justice~~
6 ~~chief justice's delegee shall issue an order~~ appoint appointing the referee selected
7 by the clerk or deputy clerk to conduct a hearing on the complaint.²⁸

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

14 (5) Following the appointment of a referee, the parties shall file all papers
15 and pleadings with the supreme court and serve a copy on the referee.
16

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

18 (1) The respondent shall file an answer with the supreme court and serve a
19 copy on the office of lawyer regulation within 20 days after service of the
20 complaint. The referee may, for cause, set a different time for the filing of the
21 answer.

22 (2) The respondent may by answer plead no contest to allegations of
23 misconduct in the complaint. The referee shall make a determination of misconduct
24 in respect to each allegation to which no contest is pleaded and for which the referee
25 finds an adequate factual basis in the record. In a subsequent disciplinary or
26 reinstatement proceeding, it shall be conclusively presumed that the respondent
27 engaged in the misconduct determined on the basis of a no contest plea.
28

29 **SCR 22.15 Scheduling conference.**

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

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

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

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

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

²⁸ Adopted by S. Ct. Order 19-04, 2019 WI 77 (issued June 26, 2019, eff. July 1, 2020). (Petition 19-04). The changes from the petition reflect the new referee selection process.

- 1 (d) Determine the necessity or desirability of amending the pleadings.
- 2 (e) Determine if the parties can stipulate to any facts or agree to the identity
- 3 or authenticity of documents.
- 4 (f) Determine if trial briefs are to be filed and the time limits for filing.
- 5 (g) Consider any other matter which may aid in the disposition of the
- 6 proceeding.
- 7 (3) The referee may adjourn the scheduling conference or order additional
- 8 scheduling conferences. Upon conclusion of the conference, the referee shall issue
- 9 an order which shall control the proceedings, including all matters determined at
- 10 the scheduling conference.

11

SCR 22.16 Proceedings before a referee.

12
13 (1) The referee has the powers of a judge trying a civil action²⁹ and shall
14 conduct the hearing as the trial of a civil action to the court. The rules of civil
15 procedure and evidence shall be followed.³⁰ The referee shall obtain the services
16 of a court reporter to make a verbatim record of the proceedings, as provided in
17 SCR, ~~71.01 to 71.03~~ Chapter 71.³¹

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

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

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

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

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

34 (d) If the referee finds that a medical incapacity makes the defense of the
35 proceeding impossible, the referee shall file a report promptly with the supreme
36 court. If the court disapproves the referee’s finding, the court shall direct the referee
37 to proceed with the misconduct action. If the court approves the referee’s finding,
38 the court shall abate the misconduct proceeding and suspend the respondent’s
39 license to practice law for medical incapacity until the court orders reinstatement

²⁹ This provision is subject to review. Court voted to retain on 3/2/20.

³⁰ This provision is subject to review. Court voted to retain on 3/2/20.

³¹ Per OLR by email of 062520.

1 of the attorney’s license under SCR 22.36. Upon reinstatement, the court shall
2 direct the referee to proceed with the misconduct action.

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

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

14 (7) The referee shall file with the supreme court a recommendation as to
15 the assessment of reasonable costs within 10 days after the parties’ submissions
16 regarding assessment of costs.

17
18 COMMENT
19

20 Wis. Stat. Ch. 785 defines “contempt” and provides that a “court of record”
21 may find a person in contempt and impose sanctions. A referee presiding over a
22 lawyer disciplinary proceeding is not a “court of record.” See also In Re
23 Disciplinary Proceedings Against Strasburg, 217 Wis.2d 318, 577 N.W.2d 1 (1998)
24 (setting forth procedure to address contempt scenario in disciplinary proceeding).³³
25

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

29 If the respondent does not object to the statement of costs then the referee’s
30 recommendation regarding costs shall be filed within 10 days of the deadline for
31 filing an objection. If an objection is filed the recommendation shall be filed within
32 10 days after receiving the OLR’s reply to the objection.
33

34 **SCR 22.17 Review; appeal.**

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

37 (2) If no appeal is filed timely, the supreme court shall review the referee's
38 report; adopt, reject or modify the referee's findings and conclusions or remand the
39 matter to the referee for additional findings; and determine and impose appropriate

³² Adopted by S. Ct. Order 19-04, 2019 WI 77 (issued June 26, 2019, eff. July 1, 2020). (Petition 19-04).

³³ Comment added to provide guidance regarding contempt.

1 discipline. The court, on its own motion, may order the parties to file briefs in the
2 matter.

3 (3) An appeal from the report of a referee is conducted under the rules
4 governing civil appeals to the supreme court. The supreme court shall place the
5 appeal on its first assignment of cases after the briefs are filed.
6

7
8 **SCR 22.18 Motion for reconsideration.**

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

12 (2) The filing of a motion for reconsideration does not stay enforcement of
13 the judgment. A request for a stay pending determination of the motion for
14 reconsideration shall be made to the supreme court.
15

16 **SCR 22.185 Enforcement of Disciplinary Orders.**

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

21 (2) Upon filing of a motion under sub. (1), the supreme court may order the
22 respondent to show cause why the relief requested in the motion should not be
23 granted. Within the time set forth in the order, the respondent shall have the right
24 to file with the supreme court a written response to the order to show cause, and
25 respondent shall serve a copy of such response on the director, or special
26 investigator. The director, or special investigator, may file a reply memorandum
27 within 10 days after filing of the response.

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

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

38 (5) Nothing in this rule shall:

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

3 (b) Limit the constitutional, statutory, or inherent authority of the supreme
4 court to enforce an order issued in a disciplinary proceeding.³⁴
5

6 **SCR 22.19 Petition for consensual license revocation.**

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

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

12 (3) If a complaint has not been filed, the petition shall be filed in the
13 supreme court and shall include the director's summary of the misconduct
14 allegations being investigated. Within 20 days after the date of filing of the petition,
15 the director shall file in the supreme court a recommendation on the petition. Upon
16 a showing of good cause, the supreme court may extend the time for filing a
17 recommendation.

18 (4) If a complaint has been filed, the petition shall be filed in the supreme
19 court and served on the director and on the referee to whom the proceeding has
20 been assigned. Within 20 days after the filing of the petition, the director shall file
21 in the supreme court a response in support of or in opposition to the petition and
22 serve a copy on the referee. Upon a showing of good cause, the supreme court may
23 extend the time for filing a response. The referee shall file a report and
24 recommendation on the petition in the supreme court within 30 days after receipt
25 of the director's response.

26 (5) The supreme court shall grant the petition and revoke the petitioner's
27 license to practice law or deny the petition and remand the matter to the director or
28 to the referee for further proceedings.
29

30 **SCR 22.20 Summary license suspension on criminal conviction.**

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

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

³⁴ Adopted 10/29/19 (Petition 19-09).

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

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

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

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

21 (7) *Filing of referee report.* The referee appointed to conduct a hearing on
22 the complaint shall conduct the hearing promptly and file the report required by
23 SCR 22.16 no later than 3 months after the filing of the complaint. In the event the
24 report is not filed within 3 months of the filing of the complaint, the respondent
25 attorney may move the supreme court for reinstatement pending completion of the
26 disciplinary proceeding. Reinstatement under this section does not terminate any
27 misconduct investigation or disciplinary proceeding pending against the attorney.
28

29 **SCR 22.21 Temporary suspension.**

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

35 (2) Before entering an order suspending an attorney's license under sub.
36 (1), the supreme court shall order the attorney to show cause why the license to
37 practice law should not be suspended temporarily. The attorney shall file with the
38 supreme court a written response to the order and serve a copy of the response on
39 the director within the time set forth in the order. The director, or special
40 investigator acting under SCR 22.25, may file a memorandum in support of or in
41 opposition to the temporary license suspension within 10 days after the attorney's

1 response is filed. ~~All~~ Except as provided in sub. (2m) and (3), SCR 22.03³⁵, 22.34
2 and 22.40, all papers, files, transcripts, communications, and proceedings,
3 including those pertaining to investigations, ~~shall be confidential and shall remain~~
4 are confidential until the supreme court has issued an order to show cause.³⁶

5 (2m) Following the issuance of the order to show cause under sub. (2), the
6 motion under sub. (1), and the order to show cause are public information, except
7 as follows:

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

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

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

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

18 (e) As otherwise expressly provided in this chapter or by law or by order of
19 the supreme court.³⁷

20 (3) Filing of complaint. The director, or a special investigator acting under
21 SCR 22.25, shall file the complaint in the disciplinary proceeding within 4 months
22 of the effective date of the temporary suspension imposed under this section, or
23 shall show cause why the temporary suspension should continue. The respondent
24 attorney may file a response with the supreme court within 10 days of service. The
25 statement of cause to continue the temporary suspension and the attorney's response
26 are public information, subject to the same exceptions set forth in sub. (2m) (a) to
27 (e).³⁸ Reinstatement under this section shall not terminate any misconduct
28 investigation or disciplinary proceeding pending against the attorney.

29 (4) Filing of referee report. The referee appointed to conduct a hearing on
30 the complaint shall conduct the hearing promptly and file the report required by
31 SCR 22.16 no later than 6 months after the filing of the complaint. If the report is
32 not filed within 6 months of the filing of the complaint, the respondent attorney
33 may move the supreme court for reinstatement pending completion of the
34 disciplinary proceeding. Reinstatement under this section does not terminate any
35 misconduct investigation or disciplinary proceeding pending against the attorney.
36

³⁵ Added per OLR 06/23/20.

³⁶ Adopted 9/16/19 (Petition 19-07); revised as proposed by committee on 042220.

³⁷ Adopted 9/16/19 (Petition 19-07).

³⁸ Adopted 9/16/19 (Petition 19-07). Modified by Committee 042220, modified to add (e) per email of 062520.

1 **SCR 22.22 Reciprocal discipline.**

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

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

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

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

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

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

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

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

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

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

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

39
40 **SCR 22.23 Publication of disposition.**

41 (1) With the exception of the supreme court's disposition of a private
42 reprimand or dismissal of a proceeding, the supreme court's disposition of a
43 proceeding under this chapter shall be published in an official publication of the

1 state bar of Wisconsin and in the official publications specified in SCR 80.01. A
2 party may file a request to publish a dismissal of a proceeding.

3 (2) The director shall send notice of a public reprimand or a license
4 suspension or revocation to the state bar of Wisconsin ~~and to a newspaper of general~~
5 ~~circulation in each county in which the attorney maintained an office for the~~
6 ~~practice of law.~~³⁹

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

9
10 **SCR 22.24 Assessment of costs.**

11 (1) The supreme court may assess against the respondent all or a portion of
12 the costs of a disciplinary proceeding in which misconduct is found, a medical
13 incapacity proceeding in which it finds a medical incapacity, ~~or~~ a reinstatement
14 proceeding, or a motion to enforce an order issued in a disciplinary proceeding,⁴⁰
15 and may enter a judgment for costs. The director may assess all or a portion of the
16 costs of an investigation when discipline is imposed under SCR 22.09. Costs are
17 payable to the office of lawyer regulation.

18 (1m) The court's general policy is that upon a finding of misconduct it is
19 appropriate to impose all costs, including the expenses of counsel for the office of
20 lawyer regulation, upon the respondent. In some cases the court may, in the
21 exercise of its discretion, reduce the amount of costs imposed upon a respondent.
22 In exercising its discretion regarding the assessment of costs, the court will consider
23 the statement of costs, any objection and reply, the recommendation of the referee,
24 and all of the following factors:

- 25 (a) The number of counts charged, contested, and proven.
- 26 (b) The nature of the misconduct.
- 27 (c) The level of discipline sought by the parties and recommended by the
28 referee.
- 29 (d) The respondent's cooperation with the disciplinary process.
- 30 (e) Prior discipline, if any.
- 31 (f) Other relevant circumstances.

32 (2) In seeking the assessment of costs by the supreme court, the director
33 shall file in the court, with a copy to the referee and the respondent, a statement of
34 costs within 20 days after the filing of the referee's report or a SCR 22.12 or
35 22.34(10) stipulation, together with a recommendation regarding the costs to be
36 assessed against the respondent. If an appeal of the referee's report is filed or the
37 supreme court orders briefs to be filed in response to the referee's report, a
38 supplemental statement of costs and recommendation regarding the assessment of
39 costs shall be filed within 20 days of the date of oral argument or, if no oral

³⁹ This provision remains subject to review on the court's own motion.
Court voted 3/2/10 to delete the newspaper publication requirement.

⁴⁰ Adopted 10/29/19 (Petition 19-09).

1 argument is held, the filing date of the last brief on appeal. The recommendation
2 should explain why the particular amount of costs is being sought. The respondent
3 may file an objection to the statement of costs and recommendation within 21 days
4 after service of the statement of costs. A respondent who objects to a statement of
5 costs must explain, with specificity, the reasons for the objection and must state
6 what he or she considers to be a reasonable amount of costs. The objection may
7 include relevant supporting documentation. The office of lawyer regulation may
8 reply within 11 days of receiving the objection. In proceeding before a referee the
9 referee shall make a recommendation to the court regarding costs. The referee
10 should explain the recommendation addressing the factors set forth in SCR 22.24
11 (1m). The referee shall consider the submissions of the parties and the record in the
12 proceeding. No further discovery or hearing is authorized.

13 (3) Upon the assessment of costs by the supreme court, the clerk of the
14 supreme court shall issue a judgment for costs and furnish a transcript of the
15 judgment to the director. The transcript of the judgment may be filed and docketed
16 in the office of the clerk of court in any county and shall have the same force and
17 effect as judgments docketed pursuant to Wis. Stat. §§ 809.25 and 806.16 (1997-
18 98).

19
20 **SCR 22.25 Misconduct and malfeasance allegations against lawyer**
21 **regulation system participants.**

22 (1) Allegations of misconduct against the director, a lawyer member of
23 staff, retained counsel, a lawyer member of a district committee, a lawyer member
24 of the preliminary review committee, a lawyer member of the board of
25 administrative oversight, or a referee shall be assigned by the director for
26 investigation to a special investigator. The supreme court shall appoint lawyers
27 who are not currently participating in the lawyer regulation system and are not
28 among the lawyers from whom retained counsel is selected under SCR 21.05 to
29 serve as special investigators. The director shall assign a special investigator in
30 rotation. A special investigator may discuss confidential matters with other special
31 investigators. All records of matters referred to a special investigator or to the
32 special preliminary review panel shall be retained by the director as required under
33 SCR 22.44 and 22.45.

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

40 (3) If the special investigator determines that there is not sufficient
41 information to support ~~a possible finding of cause to proceed~~ an allegation of
42 possible misconduct, the special investigator may close the matter. The special
43 investigator shall notify the grievant in writing that the grievant may obtain review

1 by the special preliminary review panel of the closure by submitting a written
2 request to the special investigator. The request for review must be received by the
3 special investigator within 30 days after the date of the letter notifying the grievant
4 of the closure. The special investigator shall send the request for review to the
5 special preliminary review panel ~~consisting of 4 lawyers and 3 public members~~
6 ~~appointed by the supreme court and having a quorum of 4 members. Members of~~
7 ~~the special preliminary review panel serve staggered 3-year terms, as described in~~
8 sub. (3m).⁴¹ A member may serve not more than 2 consecutive 3-year terms. Upon
9 a timely request by the grievant for additional time, the special investigator shall
10 report the request to the chairperson of the special preliminary review panel, who
11 may extend the time for submission of additional information relating to the request
12 for review. If the panel affirms the investigator's determination, the special
13 preliminary review panel shall inform the grievant. The panel's decision affirming
14 closure of the matter is final. If the panel does not concur in the investigator's
15 determination, it shall direct the investigator to initiate an investigation of the
16 matter.

17 (3m) The special preliminary review panel consists of 4 lawyers and 3
18 public members, appointed by the supreme court and having a quorum of 4
19 members. Members of the special preliminary review panel serve staggered 3-year
20 terms. A member may not serve more than 2 consecutive 3-year terms.⁴²

21 (4) If the special investigator determines that the information provided is
22 sufficient to support ~~a possible finding of cause to proceed an allegation of~~
23 misconduct, the special investigator shall conduct an investigation of the matter.
24 Upon commencing an investigation, the special investigator shall notify the
25 respondent of the matter being investigated unless in the opinion of the special
26 investigator the investigation of the matter requires otherwise. The respondent shall
27 fully and fairly disclose all facts and circumstances pertaining to the alleged
28 misconduct with 20 days after being served by ordinary mail a request for a written
29 response. The special investigator may allow additional time to respond. Except in
30 limited circumstances when good cause is shown and a response summary is more
31 appropriate, the special investigator shall provide the grievant a copy of the
32 respondent's response and the opportunity to comment in writing on the
33 respondent's response. Following receipt of the response, the special investigator
34 may conduct further investigation and may compel the respondent to answer
35 questions, furnish documents, and present information deemed relevant to the
36 investigation. In the course of the investigation, the respondent's willful failure to
37 provide relevant information, to answer questions fully, or to furnish documents
38 and the respondent's misrepresentation in a disclosure are misconduct, regardless
39 of the matters asserted in the grievance.⁴³ Upon completion of the investigation, the
40 special investigator shall do one of the following:

⁴¹ Adopted 10/29/19 (Petition 19-08, Section 7).

⁴² Adopted 10/29/19 (Petition 19-08, Section 8).

⁴³ Adopted 10/29/19 (Petition 19-08, Section 9).

1 (a) The special investigator may dismiss the matter and notify the grievant
2 in writing that the grievant may obtain review of the dismissal by submitting to the
3 special investigator a written request. The request for review must be received
4 within 30 days after the date of the letter notifying the grievant of the dismissal.
5 The special investigator shall send the request for review to the special preliminary
6 review panel. Upon a timely request by the grievant for additional time, the special
7 investigator shall report the request to the chairperson of the special preliminary
8 review panel, who may extend the time for submission of additional information
9 relating to the request for review. If the panel affirms the investigator's
10 determination, the special preliminary review panel shall inform the grievant. The
11 panel's decision affirming dismissal of the matter is final. If the panel does not
12 concur in the investigator's determination, the panel shall direct the investigator to
13 investigate the matter further.

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

18 (5) The special investigator may submit the investigative report and the
19 response of the respondent and the grievant, if any, to the special preliminary
20 review panel to determine whether there is cause for the special investigator to
21 proceed in the matter. A determination of cause to proceed shall be by the
22 affirmative vote of four or more members of the panel and does not constitute a
23 determination that there is clear, satisfactory and convincing evidence of
24 misconduct.

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

30 (b) Following resubmission, if the special preliminary review panel
31 determines that the special investigator has failed to establish cause to proceed, it
32 shall dismiss the matter and notify in writing the special investigator, the
33 respondent, and the grievant of the dismissal. The panel's decision to dismiss after
34 resubmission is final and there is no further review.⁴⁴

35 ~~(c) The special preliminary review panel shall notify the grievant in writing~~
36 ~~that the grievant may obtain review by a referee of the panel's dismissal by~~
37 ~~submitting a written request to the director. The referee shall be selected by the~~
38 ~~clerk of the supreme court, based on availability and geographic proximity to the~~
39 ~~respondent's principal office, and appointed by the chief justice or, in his or her~~
40 ~~absence, by the senior justice. The request for review must be received within 30~~
41 ~~days after the date of the letter notifying the grievant of the dismissal. The director~~

⁴⁴ Adopted by S. Ct. Order 19-04, 2019 WI 77 (issued June 26, 2019, eff. July 1, 2020). (Petition 19-04).

1 may, upon a timely request by the grievant for additional time, extend the time for
2 submission of additional information relating to the request for review. The
3 decision of the referee affirming the dismissal or referring the matter to the special
4 investigator for further investigation is final, and there shall be no review of the
5 referee's decision.⁴⁵

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

13 (8) Allegations of malfeasance against the director, retained counsel, a
14 member of a district committee, a member of the preliminary review committee, a
15 member of the board of administrative oversight, a special investigator, a member
16 of the special preliminary review panel, or a referee shall be referred by the director
17 to the supreme court for appropriate action.

18 (9) Allegations of malfeasance against a member of the staff of the office
19 of lawyer regulation shall be referred to the director for appropriate personnel
20 action.

21
22 **SCR 22.26 Activities following suspension or revocation.**

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

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

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

29 (c) Promptly provide written notification to the court or administrative
30 agency and the attorney for each party in a matter pending before a court or
31 administrative agency of the suspension or revocation and of the attorney's
32 consequent inability to act as an attorney following the effective date of the
33 suspension or revocation. The notice shall identify the successor attorney of the
34 attorney's client or, if there is none at the time notice is given, shall state the client's
35 place of residence.

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

⁴⁵ Repealed by S. Ct. Order 19-04, 2019 WI 77 (issued June 26, 2019, eff. July 1, 2020). (Petition 19-04).

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

3 (i) Full compliance with the provisions of the suspension or revocation
4 order and with the rules and procedures regarding the closing of the attorney's
5 practice.

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

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

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

14 (2) An attorney whose license to practice law is suspended or revoked or
15 who is suspended from the practice of law may not engage in this state in the
16 practice of law or in any law work activity customarily done by law students, law
17 clerks, or other paralegal personnel, except that the attorney may engage in law
18 related work in this state for a commercial employer itself not engaged in the
19 practice of law.

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

22 (4) Except as provided in SCRs 22.03,⁴⁶ 22.21, 22.34 and 22.40, all papers,
23 files, transcripts, and communications with the office of lawyer regulation
24 regarding an attorney's compliance with a suspension or revocation order are to be
25 held in confidence. The director may disclose relevant information in a motion for
26 enforcement pursuant to SCR 22.185, or in reinstatement and readmission
27 proceedings pursuant to Chapter 10, Chapter 31, or this chapter.⁴⁷

28
29

30 **COMMENT**

31

32 SCR 22.26 has been applied to administrative suspensions. In re Disciplinary
33 Proceedings Against Scanlan, 2006 WI 38, 290 Wis. 2d 30, 712 N.W.2d 877.⁴⁸

34

35 **SCR 22.27 Activities of other attorneys.**

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

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

⁴⁶ Added SCR 22.03 per OLR on 062520.

⁴⁷ Proposed addition by OLR and Committee on 042220.

⁴⁸ Adopted 10/29/19 (Petition 19-08, Section 10).

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

4 (b) Prepare cases for trial.

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

6 (d) Write briefs or trial memoranda.

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

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

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

16

17 **SCR 22.28 License reinstatement.**

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

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

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

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

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

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

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

42 (3) The license of an attorney that is revoked or suspended for misconduct
43 for six months or more, or revoked for failure to fulfill the terms of a conditional

1 admission agreement under SCR 40.075, shall be reinstated pursuant to the
2 procedure set forth in SCR 22.29 to 22.33 and only by order of the supreme court.
3

4 **SCR 22.29 Petition for reinstatement.**

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

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

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

12 (3m) The petitioner shall file 9 copies of a petition for reinstatement.

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

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

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

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

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

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

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

27 (g) The petitioner can safely be recommended to the legal profession, the
28 courts and the public as a person fit to be consulted by others and to represent them
29 and otherwise act in matters of trust and confidence and in general to aid in the
30 administration of justice as a member of the bar and as an officer of the courts.

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

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

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

36 (m)⁴⁹ The petitioner has made restitution to or settled all claims of persons
37 injured or harmed by petitioner's misconduct, including reimbursement to the
38 Wisconsin lawyers' fund for client protection for all payments made from that fund,
39 or, if not, the petitioner's explanation of the failure or inability to do so.
40

41 COMMENT

⁴⁹ Changed from (4m) per email with OLR 062520.

1 An attorney seeking reinstatement of a suspended or revoked license is
2 required to reimburse the Fund for any payments made to injured clients as a result
3 of the attorney’s conduct, or to explain why this is not possible. Fund payment to
4 a client signifies that the lawyer’s dishonest conduct caused a loss that was restored
5 through an assessment against all members of the bar. The attorney responsible
6 should be required to reimburse the Fund before resuming practice. In cases where
7 the attorney demonstrates that he or she cannot make full restitution to injured
8 clients and to the Fund, the Fund will defer its right to reimbursement until the
9 clients have been made whole.

10
11 (4x) At the time that the petitioner serves a copy of the petition for
12 reinstatement on the director, the petitioner shall also submit to the director a
13 completed reinstatement questionnaire.⁵⁰

14
15 COMMENT

16
17 A blank copy of the reinstatement questionnaire may be obtained from the
18 office of lawyer regulation. The questionnaire is used by the office of lawyer
19 regulation to assist in its investigation. The questionnaire is not to be filed with the
20 court.⁵¹

21
22 (5) A petition for reinstatement shall be accompanied by an advance
23 deposit in an amount to be set by the supreme court for payment of all or a portion
24 of the costs of the reinstatement proceeding. The supreme court may extend the
25 time for payment or waive payment in any case in which to do otherwise would
26 result in hardship or injustice.

27
28 **~~SCR 22.30 — Reinstatement procedure.~~**

29 ~~(1) The clerk or deputy clerk of the supreme court shall select a an available~~
30 ~~referee from the panel provided in SCR 21.08, based on availability and geographic~~
31 ~~proximity to the location of the petitioner's place of residence, and the chief justice~~
32 ~~or, in his or her absence, the senior justice chief justice's delegee shall issue an order~~
33 ~~appoint appointing the referee selected by the clerk or deputy clerk to conduct a~~
34 ~~hearing on the petition for reinstatement. In the case of a license suspension, the~~
35 ~~hearing shall not be held prior to the expiration of the period of suspension.~~
36 ~~Following the appointment of a referee, the parties shall file all papers and~~
37 ~~pleadings with the supreme court and serve a copy on the referee.~~⁵²

⁵⁰ Adopted 9/16/19 (Petition 19-06).

⁵¹ Adopted 9/16/19 (Petition 19-06).

⁵² 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).

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

4 ~~(2m) The board of bar examiners shall determine the attendance and~~
5 ~~reporting requirements of the petitioner as required by SCR 31.06 and file a report~~
6 ~~with the referee within the time period ordered by the referee.~~

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

12 ~~(4) The notice under sub. (3) shall contain a brief statement of the nature~~
13 ~~and date of suspension or revocation, the matters required to be proved for~~
14 ~~reinstatement, and the date, time and location of the hearing on the petition.~~⁵³

15
16 **SCR 22.30 Reinstatement Procedure.**

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

24 ⁵⁴

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

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

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

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

34 (d) Interested persons⁵⁵ may submit written comments regarding the
35 petitioner and the reinstatement petition, the address (physical and electronic) to
36 which written comments may be submitted, and the deadline for submitting written

⁵³ Repealed and recreated 9/16/19 (Petition 19-06).

⁵⁴ This provision was reviewed on the court's own motion. On 3/2/20 the court voted to eliminate the requirement of newspaper publication. OLR seeks discretion to use publication in certain reinstatement proceedings.

⁵⁵ "Parties" changed to "persons" per Committee recommendation on 042220.

1 comments, which shall be 60 days following the date on which the petitioner for
2 reinstatement was filed. All formal written comments regarding the petition shall
3 be forwarded to a referee, if any, and to the supreme court.

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

7 (f) Individuals who provide their address and ask to have notice of a
8 reinstatement hearing will have a notice of a reinstatement hearing sent to them at
9 the address provided.⁵⁶

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

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

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

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

28 (4) Within 75 days after the filing of the petition, the director shall
29 investigate the eligibility of the petitioner for reinstatement and shall file with the
30 court a response to the petition stating whether the petitioner has demonstrated to
31 the director satisfaction of all of the criteria for reinstatement or the director opposes
32 the petition. Except as provided in SCRs 22.03,⁵⁷ 22.21, 22.34 and 22.40, all
33 papers, files, transcripts, and communications with the office of lawyer regulation
34 regarding the investigation are to be held in confidence. Papers filed in the
35 reinstatement proceeding are public, except where expressly provided otherwise in
36 this chapter, by court order, or by law.⁵⁸ Upon motion of the director or the
37 petitioner for good cause shown, the court may grant the director an extension of
38 time to complete the investigation and file the response to the petition.

39 (5)(a) If the director’s response states that the petitioner has demonstrated

⁵⁶ “Only individuals” was changed to “Individuals” by Committee on 042220.

⁵⁷ Added per OLR on 062520.

⁵⁸ Added by Committee recommendation on 042420.

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

13 (b) The supreme court shall consider the petition and stipulation without the
14 appointment of a referee. The court may approve the stipulation, adopt the
15 stipulated facts and conclusions of law, and reinstate the petitioner's license to
16 practice law in Wisconsin; the court may reject the stipulation and refer the petition
17 to a referee for a hearing and consideration under sub. (6) as if no stipulation had
18 been filed; or the court may direct the parties to consider modifications to the
19 stipulation.

20 (c) If the supreme court directs the parties to consider specific modifications
21 to the stipulation, the parties may, within 20 days of the date of the order, file a
22 revised stipulation, in which case the supreme court may approve the revised
23 stipulation, adopt the stipulated facts and conclusions of law, and reinstate the
24 petitioner's license to practice law in Wisconsin; or the court may reject the
25 stipulation and refer the petition to a referee for a hearing and consideration under
26 sub. (6) as if no stipulation had been filed. If the parties do not file a revised
27 stipulation within 20 days of the date of the order or if the parties so request in
28 writing, a referee shall be appointed and the petition shall be referred to the referee
29 for a hearing and consideration under sub. (5) as if no stipulation had been filed.

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

33 (6)(a) If the director opposes the petition for reinstatement, ~~the clerk or~~
34 ~~deputy clerk of the supreme court shall select~~ an available referee shall be selected
35 from the panel provided in SCR 21.08, based on the location of the petitioner's
36 place of residence. The chief justice or, in his or her absence, the chief justice's
37 delegee shall issue an order appointing the referee ~~selected by the clerk or deputy~~
38 to conduct a hearing and prepare a report on the petition for reinstatement.⁵⁹

39 (b) The referee shall have the powers of a judge trying a civil action and
40 shall conduct the proceedings regarding the petition pursuant to the rules of civil

⁵⁹ 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). Additional changes from petition reflect new procedure for referee selection.

- 1 procedure, except where these rules provide a different procedure.⁶⁰
- 2 (c) Following the appointment of a referee, the parties shall file all papers
- 3 and pleadings with the supreme court and serve a copy on the referee.
- 4 (d) Following the appointment of a referee, the director shall transfer to the
- 5 referee all formal written comments regarding or in response to the petition. The
- 6 director shall also provide the referee with a list of all individuals who requested
- 7 notice of the hearing on the petition.
- 8 (e) The referee shall establish a schedule for proceedings and a hearing on
- 9 the petition, which hearing shall be held at the earliest feasible date.
- 10 (f) At least 20 days prior to the hearing, the director shall provide written
- 11 notice of the date, time, and location of the hearing to all individuals who requested
- 12 notice of the hearing on the petition. If the hearing is rescheduled, the director shall
- 13 provide written notice of the date, time, and location of the rescheduled hearing to
- 14 all individuals who requested notice of the hearing on the petition. The director
- 15 shall advise the referee that the director has complied with this notice requirement.
- 16 (g) The reinstatement hearing shall be public.
- 17 (h) The referee shall appoint a person to act as the court reporter to make a
- 18 verbatim record of the proceedings as provided in SCR, Chapter 71.⁶¹
- 19 (i) The petitioner and the director or a person designated by the director
- 20 shall appear at the hearing. The petitioner may be represented by counsel.
- 21 (j) The referee shall conduct the hearing as the trial of a civil action to the
- 22 court. The hearing shall be conducted pursuant to the rules of civil procedure, but
- 23 the rules of evidence shall not apply, and the referee may consider any relevant
- 24 information presented. The director, petitioner, and interested persons may
- 25 present information in support of or in opposition to reinstatement.⁶²

Comment

26
27
28 Wis. Stat. ch. 785 defines "contempt" and provides that a "court of record"
29 may find a person in contempt and impose sanctions. A referee presiding over a
30 lawyer disciplinary proceeding is not a "court of record." See also In Re
31 Disciplinary Proceedings Against Strasburg, 217 Wis.2d 318, 577 N.W.2d 1 (Wis.
32 1998) (setting forth procedure to address contempt scenario in disciplinary
33 proceeding).⁶³

34
35 **~~SCR 22.31 Reinstatement hearing.~~**⁶⁴

⁶⁰ This provision remains subject to review. Court voted to retain 3/2/10.
⁶¹ Change per OLR email of 062520.
⁶² Requested by OLR and approved by Committee on 4/13/20.
⁶³ Added for consistency with Comment adopted for SCR 22.16.
⁶⁴ Repealed 9/16/19 (Petition 19-06).

- 1 ~~(1) The petitioner has the burden of demonstrating, by clear, satisfactory,~~
- 2 ~~and convincing evidence, all of the following:~~
- 3 ~~(a) That he or she has the moral character to practice law in Wisconsin.~~
- 4 ~~(b) That his or her resumption of the practice of law will not be detrimental~~
- 5 ~~to the administration of justice or subversive of the public interest.~~
- 6 ~~(c) That his or her representations in the petition, including the~~
- 7 ~~representations required by SCR 22.29(4)(a) to (m) and 22.29(5), are substantiated.~~
- 8 ~~(d) That he or she has complied fully with the terms of the order of~~
- 9 ~~suspension or revocation and with the requirements of SCR 22.26.~~
- 10 ~~(2) The reinstatement hearing shall be public.~~
- 11 ~~(3) The referee shall appoint a person to act as court reporter to make a~~
- 12 ~~verbatim record of the proceeding as provided in SCR 71.01 to 71.03.~~
- 13 ~~(4) The petitioner and the director or a person designated by the director~~
- 14 ~~shall appear at the hearing. The petitioner may be represented by counsel.~~
- 15 ~~(5) The hearing shall be conducted pursuant to the rules of civil procedure.~~
- 16 ~~The rules of evidence shall not apply, and the referee may consider any relevant~~
- 17 ~~information presented. Interested persons may present information in support of or~~
- 18 ~~in opposition to reinstatement.~~

19

20 **SCR 22.305 Standard for Reinstatement.** At all times relevant to the

21 petition, the petitioner has the burden of demonstrating, by clear, satisfactory, and

22 convincing evidence, all of the following:

- 23 (1) That he or she has the moral character to practice law in Wisconsin.
- 24 (2) That his or her resumption of the practice of law will not be detrimental
- 25 to the administration of justice or subversive of the public interest.
- 26 (3) That his or her representations in the petition, including the
- 27 representations required by SCR 22.29(4)(a) to (m) and 22.29(5), are substantiated.
- 28 (4) That he or she has complied fully with the terms of the order of
- 29 suspension or revocation and with the requirements of SCR 22.26.⁶⁵

30

31 **SCR 22.32 Report of the referee; response.**

- 32 (1) Within 30 days after the conclusion of the hearing or the filing of the
- 33 hearing transcript, whichever is later, the referee shall file in the supreme court a
- 34 report setting forth findings and a recommendation on the petition for
- 35 reinstatement.
- 36 (2) Within 10 days after the filing of the referee's report, the petitioner and
- 37 the director may file in the supreme court a response to the report.

38

39 **SCR 22.33 Review; appeal.**

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

⁶⁵ 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 referee's
5 report, order reinstatement, with or without conditions, deny reinstatement, or order
6 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 22.24.⁶⁶

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 the
20 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 to
29 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 attorney
33 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 court
41 for the suspension of the respondent's license to practice law or the imposition of
42 conditions on the respondent's practice of law. A determination of cause to proceed

⁶⁶ Adopted 9/16/19 (Petition 19-06).

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

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

8 (10) The petition may be accompanied by a stipulation of the director and
9 the respondent to a suspension or to the imposition of conditions on the respondent's
10 practice of law. The supreme court may consider the petition and stipulation
11 without the appointment of a referee. If the supreme court approves the stipulation,
12 it shall issue an order consistent with the stipulation. If the supreme court rejects
13 the stipulation, ~~the clerk or deputy clerk of the supreme court shall select a~~ an
14 available referee shall be selected from the panel provided in SCR 21.08, based on
15 ~~availability and geographic proximity to the location of~~ the respondent's place of
16 residence; ~~the~~ The chief justice or, in his or her absence, the ~~senior justice~~ chief
17 justice's delegee shall issue an order appoint appointing the referee ~~selected by the~~
18 ~~clerk or deputy clerk~~, and the matter shall proceed as a petition filed without a
19 stipulation. A stipulation rejected by the supreme court has no evidentiary value
20 and is without prejudice to the respondent's defense of the proceeding or the
21 prosecution of the petition.⁶⁷

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

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

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

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

⁶⁷ Adopted by S. Ct. Order 19-04, 2019 WI 77 (issued June 26, 2019, eff. July 1, 2020). (Rule Petition 19-04). Additional changes from the petition are based on the new referee selection policy.

1 (12) All papers, files, transcripts, communications and proceedings,
2 including those pertaining to investigations,⁶⁸ shall be confidential and shall remain
3 confidential ~~until the supreme court has issued an order revoking, suspending~~
4 ~~indefinitely, or imposing conditions on the attorney's license to practice law, except~~
5 as provided in sub. (12m) and except that acknowledgement that a proceeding is
6 pending and notification to another court before which a similar petition is pending
7 may be made when considered necessary by the director and that any publication
8 the supreme court considers necessary may be made.⁶⁹

9 (12m) Following the issuance by the supreme court of an order revoking,
10 suspending indefinitely, or imposing conditions on the attorney's license to practice
11 law, the petition and all papers relating to the petition that are filed with the supreme
12 court are public information, except as otherwise provided in this chapter, by court
13 order, or by law.⁷⁰

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

17 (15m) Following appointment of a referee, the parties shall file all papers
18 and pleadings with the supreme court and serve a copy of those documents on the
19 referee.

20
21 **SCR 22.341 Review; appeal.**

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

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

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

31
32 **SCR 22.35 Medical incapacity determined by a court.**

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

⁶⁸ Added by Committee recommendation on 042420.

⁶⁹ Adopted 9/16/19 (Petition 19-07).

⁷⁰ Adopted 9/16/19 (Petition 19-07); modified for consistency with
22.30(4) and 22.40(1).

1 court shall suspend the attorney's license to practice law for an indefinite period.
2 The procedure set forth in this chapter for medical incapacity proceedings does not
3 apply to this rule.
4

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

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

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

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

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

24 (5) Following the investigation, the petition shall be submitted to a referee,
25 ~~selected by the The clerk or deputy clerk of the supreme court shall select~~ An
26 available referee shall be selected from the panel provided in SCR 21.08, based on
27 geographic proximity to the location of the respondent's place of residence, and
28 appointed by the chief justice or, in his or her absence, the senior justice chief
29 justice's delegee shall issue an order appointing the referee selected by the clerk or
30 deputy clerk to review the petition.⁷¹

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

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

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

⁷¹ Adopted by S. Ct. Order 19-04, 2019 WI 77 (issued June 26, 2019, eff. July 1, 2020). (Rule Petition 19-04). The changes from the petition reflect the new referee selection procedures.

1 880 (1997-98), the supreme court may direct reinstatement of the attorney's license,
2 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 jurisdictional
8 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 incapacity
12 in a petition, allegations of noncompliance with an order of the supreme court
13 issued in a disciplinary proceeding,⁷²and character and fitness to practice law shall
14 be established by evidence that is clear, satisfactory and convincing.

15
16 **SCR 22.39 Burden of proof.**

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

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

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

33
34 **WISCONSIN COMMENT**

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

⁷² 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 property
3 in trust, contrary to SCR 20:1.15(b)(1).

4 (2) A lawyer's failure to comply with the record production requirements of
5 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 has
10 failed to hold trust or fiduciary property in trust, contrary to SCR 20:1.15(b)(1) or
11 SCR 20:1.15(k)(1). See, In re Trust Estate of Martin, 39 Wis. 2d 437, 159 N.W.2d
12 660 (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 otherwise provided
17 in this chapter, SCR 22.21(2), all papers, files, transcripts, and communications in
18 any matter ~~[relating to an allegation of attorney misconduct],~~⁷³an investigation
19 pursuant to SCR Chapters 10, 22, and 31, and monitoring compliance with
20 conditions, suspension, or revocation imposed by the supreme court,~~involving the~~
21 ~~office of lawyer regulation~~ are to be held in confidence by the director and staff of
22 the office of lawyer regulation, the members of the district committees, special
23 investigators, the members of the special preliminary review panel, and the
24 members of the preliminary review committee. Following the filing of a complaint
25 or petition, the proceeding and all papers filed in it are public, except where
26 expressly provided otherwise in this chapter, by court order, or by law.⁷⁴

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

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

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

⁷³ Modified by agreement of Committee and OLR 042420.

⁷⁴ Adopted 9/16/19 (Petition 19-07); modified by committee 042420.

1 further proceedings and there is no recommendation of discipline, the director may
2 issue an explanatory statement.

3 (5) In order to provide guidance to the bar, the director may provide the
4 state bar of Wisconsin a summary of facts and violations of the rules of professional
5 conduct for attorneys in a matter in which a private reprimand has been imposed.
6 The summary shall be published in an official publication of the state bar of
7 Wisconsin but may not disclose information identifying the attorney reprimanded.

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

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

12

13 **SCR 22.41 Pending litigation.**

14 Neither the director nor a referee may defer, except for cause, a matter or
15 proceeding because of substantial similarity to the material allegations of pending
16 criminal or civil litigation.

17

18 **SCR 22.42 Subpoena.**

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

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

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

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

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

1 (4) The referee shall rule on a challenge to the validity of a subpoena. If a
2 referee has not been assigned to the matter, a challenge to a subpoena issued by the
3 director shall be filed with the supreme court together with a petition for the
4 appointment of a referee to rule on the challenge.

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

11
12 **SCR 22.43 Cooperation of district attorney.**

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

15
16 **SCR 22.44 Retention of records.**

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

20
21 **SCR 22.45 Expungement of records.**

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

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

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

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

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CHARACTER AND FITNESS INVESTIGATIONS

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.