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

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PETITION 19-\_\_

**PETITION OF the OLR Process Review Committee FOR AN ORDER REPEALING AND RECREATING Supreme Court Rules 22.12 and 22.17, AMENDING Supreme Court Rules 21.09(1), 21.16(2)(c), 22.21(4), 22.22(2) (b), (3)(intro) and (b), and (6), 22.24(1), (1m)(intro), (2), and (3), CREATING Supreme Court Rules 21.08(1)(b), 21.09(1m), 22.16(6)(b) and (7)(b), 22.22(2m) and (4m), and 22.23(1m), RENUMBERING AND AMENDING Supreme Court Rules 21.08(1), and 22.16(6) and (7).**

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

### PETITION

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

**Section 1. SCR 21.08(1) is renumbered SCR 21.08(1)(a) and amended to read:**

**21.08 (1)(a)** Members of a permanent panel of attorneys and reserve judges appointed by the Supreme Court shall serve as referees to conduct hearings on complaints of attorney misconduct, petitions alleging attorney medical incapacity, and petitions for license reinstatement, ~~to~~. Except as provided in par. (b), referees shall make findings, conclusions and recommendations and submit them to the Supreme Court for review and appropriate action, and to review consensual discipline under SCR 22.09.

**Section 2. SCR 21.08 (1)(b) is created to read:**

**21.08 (1)(b)** In addition to their duties under par. (1), referees shall consider consensual discipline under SCR 22.09 and consider stipulations for discipline under SCR 22.12. Referees shall make findings and conclusions to determine attorney misconduct, and impose discipline in attorney misconduct complaints if any of the following apply:

1. The referee imposes a suspension of the attorney's license to practice law for a period not exceeding three months.
2. The referee approves a stipulation under SCR 22.12 to suspend the attorney's license to practice law for a period not exceeding one year.
3. The referee approves consensual discipline under SCR 22.09 or imposes a public or private reprimand.
4. The referee approves a stipulation under SCR 22.12 to impose discipline defined in SCR 21.16(1m)(d) through (f).

**Section 3. SCR 21.09(1) is amended to read:**

**21.09 (1)** ~~The~~ Except as provided in SCR 21.08(1)(b), the Supreme Court determines attorney misconduct and medical incapacity and imposes discipline or directs other action in attorney misconduct and medical incapacity proceedings filed with the court.

**Section 4. SCR 21.09 (1m) is created to read:**

**21.09 (1m)** The Supreme Court shall determine whether, pursuant to SCR 22.03 (4), to suspend or reinstate the license to practice law of a respondent in an attorney disciplinary proceeding, conduct appellate review of reports and orders imposing discipline pursuant to SCR 22.17, determine whether to suspend temporarily an attorney's license to practice law pursuant to SCR 22.21, and determine whether to reinstate a license under SCR 22.28 through 22.33.

**Section 5. SCR 21.16 (2)(c ) is amended to read:**

**21.16 (2)(c )** ~~Upon ordering~~ When the Supreme Court or a referee orders restitution to the Wisconsin lawyers' fund for client protection under par. (a)2., the clerk of the Supreme Court shall issue a judgment and shall furnish a transcript of the judgment to the Fund. The transcript of the judgment may be filed and docketed in the office of the clerk of court in any county and shall have the same force and effect as judgments docketed under ss. 809.25 and 806.16, stats.

**Section 6. SC R 22.12 is repealed and recreated to read:**

**22.12 (1)** The director may file with the complaint a stipulation of the director and the respondent to the facts, conclusions of law regarding misconduct, and discipline to be imposed.

**(2)(a)** If the parties have stipulated to revocation of the respondent's license to practice law or suspension of the respondent's license to practice law for a period exceeding one year, the Supreme Court may consider the complaint and stipulation without the appointment of a referee, in which case the Supreme Court may approve the stipulation, reject the stipulation, or direct the parties to consider specific modifications to the stipulation.

**(b)** If the Supreme Court approves a stipulation, it shall adopt the stipulated facts and conclusions of law and impose the stipulated discipline.

**(c)** If the Supreme Court rejects a stipulation, a referee shall be appointed and the matter shall proceed as a complaint filed without a stipulation.

**(d)** If the Supreme Court directs the parties to consider specific modifications to the stipulation, the parties may, within 20 days of the date of the order, file a revised stipulation, in which case the Supreme Court may approve the revised stipulation, adopt the stipulated facts and conclusions of law, and impose the stipulated discipline. If the parties do not file a revised stipulation within 20 days of the date of the order, a referee shall be appointed and the matter shall proceed as a complaint filed without a stipulation.

**(3)(a)** If the parties have stipulated to suspension of the respondent's license to practice law for a period not exceeding one year, to imposition of discipline defined in SCR 21.16(1m)(d) through (f), or a combination thereof, a referee appointed under SCR 22.13(3) may approve the

stipulation, reject the stipulation, or direct the parties to consider specific modifications to the stipulation.

(b) If the referee approves a stipulation, he or she shall adopt the stipulated facts and conclusions of law and impose the stipulated discipline.

(c) If the referee rejects a stipulation, the matter shall proceed as a complaint filed without a stipulation.

(d) If the referee directs the parties to consider specific modifications to the stipulation, the parties may, within 20 days of the date of the order, file a revised stipulation, in which case the referee may approve the revised stipulation, adopt the stipulated facts and conclusions of law, and impose the stipulated discipline. If the parties do not file a revised stipulation within 20 days of the date of the order, the matter shall proceed as a complaint filed without a stipulation.

(4) A stipulation rejected under this rule has no evidentiary value and is without prejudice to the respondent's defense of the proceeding or the prosecution of the complaint.

**Section 7. SCR 22.16 (6) is renumbered SCR 22.16 (6)(intro) and amended to read:**

**22.16 (6)(intro)** Within 30 days after the conclusion of the hearing or the filing of the hearing transcript, whichever is later, the referee shall ~~file~~ do one of the following:

(a) File with the Supreme Court a report setting forth findings of fact, conclusions of law regarding the respondent's misconduct, if any, and a recommendation for the imposition of specific discipline, pursuant to SCR 21.08 (1)(a).

**Section 8. SCR 22.16 (6)(b) is created to read:**

**22.16 (6)(b)** File with the Supreme Court and provide to the director and the respondent a report setting forth findings of fact, conclusions of law regarding the respondent's misconduct, if any, and an order for dismissal of the proceeding or the imposition, pursuant to SCR 21.08 (1)(b), of specific discipline.

**Section 9. SCR 22.16 (7) is renumbered SCR 22.16 (7)(a) and amended to read:**

**(7)(a)** ~~The A~~ A referee who files a report under sub. (6)(a) with the Supreme Court shall also file with the Supreme Court a recommendation as to the assessment of reasonable costs within 10 days after the parties' submissions regarding assessment of costs.

**Section 10. SCR 22.16 (7)(b) is created to read:**

**22.16(7)(b)** A referee who imposes discipline under sub. (6)(b) shall file with the Supreme Court and provide to the director and the respondent an order assessing reasonable costs within 10 days after the parties' submissions regarding assessment of costs.

**Section 11. SCR 22.17 is repealed and recreated to read:**

**22.17 (1) (a)** Within 20 days after the filing of a referee's report under SCR 22.16 (6)(a), the director or the respondent may file with the Supreme Court an appeal from the referee's report. If no appeal is filed timely, the Supreme Court shall review the referee's report; adopt, reject or modify the referee's findings and conclusions or remand the matter to the referee for additional findings; and determine and impose appropriate discipline. The court, on its own motion, may order the parties to file briefs in the matter.

**(2)** Within 20 days after the filing of a referee's order under SCR 22.16 (6)(b), the director or the respondent may file with the Supreme Court an appeal from the referee's order.

**(3)** An appeal from a report or order of a referee filed under this section is conducted under the rules governing civil appeals to the Supreme Court. The Supreme Court shall place the appeal on its first assignment of cases after the briefs are filed.

**Section 12. SCR 22.21 (4) is amended to read:**

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

**Section 13. SCR 22.22 (2)(b), (3)(intro) and (b), and (6) are amended to read:**

**22.22 (2)(b)** A motion requesting an order directing the attorney to inform the Supreme Court or the referee appointed under sub. (2m) in writing within 20 days of any claim of the attorney predicated on the grounds set forth in sub. (3) that the imposition of the identical discipline or license suspension by the Supreme Court or referee would be unwarranted and the factual basis for the claim.

**(3)(intro)** The Supreme Court or referee shall impose the identical discipline or license suspension unless one or more of the following is present:

**(3)(b)** There was such an infirmity of proof establishing the misconduct or medical incapacity that the Supreme Court or referee could not accept as final the conclusion in respect to the misconduct or medical incapacity.

**(6)** If the discipline or license suspension imposed in the other jurisdiction has been stayed, any reciprocal discipline or license suspension imposed by the Supreme Court or referee shall be held in abeyance until the stay expires.

**Section 14. SCR 22.22 (2m) is created to read:****22.22 (2m)** If the judgment or order filed under sub. (2) (a) imposes discipline that a referee may impose under SCR 21.08(1)(b), the clerk of the Supreme Court shall select a referee from the panel provided in SCR 21.08, based on availability and geographic proximity to the respondent's principal office, and the chief justice or, in his or her absence, the senior justice shall appoint the referee to proceed under this section.

**Section 15. SCR 22.22 (4m) is created to read:**

**22.22 (4m)** An order issued by a referee under sub. (3) may be appealed under SCR 22.17 (2).

**Section 16. SCR 22.23 (1m) is created to read:**

**22.23 (1m)** With the exception of a referee's disposition of a private reprimand or dismissal of a proceeding, a referee's disposition of a proceeding under this chapter shall be published in an official publication of the state bar of Wisconsin and in the official publications specified in SCR 80.01. A party may file a request to publish a dismissal of a proceeding.

**Section 17. SCR 22.24 (1), (1m) (intro), (2), and (3) are amended to read:**

**22.24 (1)** The Supreme Court or a referee who imposes discipline under this chapter may assess against the respondent all or a portion of the costs of a disciplinary proceeding in which misconduct is found, a medical incapacity proceeding in which it finds a medical incapacity, or a reinstatement proceeding and may enter a judgment for costs. The director may assess all or a portion of the costs of an investigation when discipline is imposed under SCR 22.09. Costs are payable to the office of lawyer regulation.

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

**(2)** In seeking the assessment of costs ~~by the Supreme Court~~, the director shall file in the court, with a copy to the referee and the respondent, or with the referee, with a copy to the respondent if the referee imposed discipline, a statement of costs within 20 days after the filing of the referee's report or order or a SCR 22.12 or 22.34(10) stipulation, together with a recommendation regarding the costs to be assessed against the respondent. If an appeal of the referee's report or order is filed or the Supreme Court orders briefs to be filed in response to the referee's report, a supplemental statement of costs and recommendation regarding the assessment of costs shall be filed within 20 days of the date of oral argument or, if no oral argument is held, the filing date of the last brief on appeal. The recommendation should explain why the particular amount of costs is being sought. The respondent may file an objection to the statement of costs and recommendation within 21 days after service of the statement of costs. A respondent who

objects to a statement of costs must explain, with specificity, the reasons for the objection and must state what he or she considers to be a reasonable amount of costs. The objection may include relevant supporting documentation. The office of lawyer regulation may reply within 11 days of receiving the objection. ~~In proceeding before a referee~~ If the discipline was imposed by the Supreme Court, the referee shall make a recommendation to the court regarding costs. If discipline was imposed by a referee, the referee shall enter an order regarding costs. The referee should explain the recommendation or order addressing the factors set forth in SCR 22.24 (1m). The referee shall consider the submissions of the parties and the record in the proceeding. No further discovery or hearing is authorized.

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

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

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Hon. Gerald Ptacek, Chair, OLR Procedure Review Committee