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**In the matter of amending Supreme Court Rules pertaining to  
the charging process in attorney disciplinary proceedings**

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**PETITION 19-\_\_**

**PETITION OF the OLR Process Review Committee's Subcommittee on Process FOR AN ORDER AMENDING Supreme Court Rules 22.02(2)(d), 22.25(3) and (4)(intro), and 22.26, REPEALING Supreme Court Rules 21.01(1)(b) and 21.06, REPEALING AND RECREATING Supreme court Rule 22.03(4), and CREATING Supreme Court Rules 21.01(1)(bg), 22.02(6)(d), and 22.25(3m).**

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

### **PETITION**

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

**Section 1. SCR 21.01(1)(b) is repealed.**

**Section 2. SCR 21.01 (1)(bg) is created to read:**

**22.01(1)(bg)** Special investigators and the special preliminary review panel, provided in SCR 22.25.

**Section 3. SCR 21.06 is repealed.**

**Section 4. SCR 22.02(2)(d) is amended to read:**

**22.02(2)(d)** Refer the matter to the director with a recommendation that the matter be investigated by staff ~~or~~, diverted, or resolved by a consensual reprimand.

**Section 5. SCR 22.02(6)(d) is created to read:**

**22.02(6)(d)** Resolve the matter with a consensual reprimand as provided by SCR 22.09.

**Section 6. SCR 22.03(4) is repealed and recreated to read:**

**22.03(4)(a)** If respondent fails fully and fairly to disclose all facts and circumstances pertaining to the alleged misconduct within the deadline established pursuant to par. (2), including any extension granted by the director or special investigator, or fails to cooperate in other respects with an investigation, the director or special investigator shall notify respondent by personal

service that respondent's license to practice law will be automatically suspended unless, within 20 days after receiving such personal service, respondent:

- 1.** Fully and fairly discloses all facts and circumstances pertaining to the alleged misconduct or otherwise cooperates with the investigation, to the reasonable satisfaction of the director or special investigator; or,
- 2.** Submits evidence to the director or special investigator demonstrating, to the reasonable satisfaction of the director or special investigator, respondent's inability to disclose the facts and circumstances or otherwise cooperate with the investigation; or,
- 3.** Files a motion with the supreme court showing cause why respondent's license to practice should not be suspended for willful failure to respond or cooperate with the investigation.

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

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

**3.** If respondent files a motion with the supreme court pursuant to par. (a) 3., the supreme court shall act upon respondent's motion, following its own procedures. All papers, files, transcripts, communications, and proceedings on the motion are confidential until the supreme court has acted upon the motion.

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

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

**(d) 1.** Notwithstanding SCR 22.28, if, within 18 months of the date of suspension pursuant to SCR 22.03(4), a respondent whose license was suspended for failure to satisfy a condition of par. (a) 1. to 3., or failure to meet a deadline established pursuant to par. (b) 2., discloses fully and fairly all facts and circumstances pertaining to the alleged misconduct, or otherwise cooperates with the investigation, to the reasonable satisfaction of the director or special investigator,

respondent's license to practice law shall be automatically reinstated. Upon reinstatement of a license pursuant to this subsection, the director or special investigator shall send notice of the reinstatement to each person identified in par. (c) 1.

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

**Section 7. SCR 22.25(3) is amended to read:**

**22.25(3)** If the special investigator determines that there is not sufficient information to support ~~a possible finding of cause to proceed~~ an allegation of possible misconduct, the special investigator may close the matter. The special investigator shall notify the grievant in writing that the grievant may obtain review by the special preliminary review panel of the closure by submitting a written request to the special investigator. The request for review must be received by the special investigator within 30 days after the date of the letter notifying the grievant of the 181 closure. The special investigator shall send the request for review to the special preliminary review panel ~~consisting of 4 lawyers and 3 public members appointed by the supreme court and having a quorum of 4 members. Members of the special preliminary review panel serve staggered 3-year terms, as described in sub. (3m).~~ A member may serve not more than 2 consecutive 3-year terms. Upon a timely request by the grievant for additional time, the special investigator shall report the request to the chairperson of the special preliminary review panel, who may extend the time for submission of additional information relating to the request for review. If the panel affirms the investigator's determination, the special preliminary review panel shall inform the grievant. The panel's decision affirming closure of the matter is final. If the panel does not concur in the investigator's determination, it shall direct the investigator to initiate an investigation of the matter.

**Section 8. SCR 22.25(3m) is created to read:**

**22.25(3m)** The special preliminary review panel consists of 4 lawyers and 3 public members, appointed by the supreme court and having a quorum of 4 members. Members of the special preliminary review panel serve staggered 3-year terms. A member may not serve more than 2 consecutive 3-year terms.

**Section 9. SCR 22.25(4)(intro) is amended to read:**

**22.25(4)(intro)** If the special investigator determines that the information provided is sufficient to support ~~a possible finding of cause to proceed~~ an allegation of misconduct, the special investigator shall conduct an investigation of the matter. Upon commencing an investigation, the special investigator shall notify the respondent of the matter being investigated unless in the opinion of the special investigator the investigation of the matter requires otherwise. The respondent shall fully and fairly disclose all facts and circumstances pertaining to the alleged misconduct with 20 days after being served by ordinary mail a request for a written response. The special investigator may allow additional time to respond. Except in limited circumstances when good cause is shown and a response summary is more appropriate, the special investigator shall provide the grievant a copy of the respondent's response and the opportunity to comment in writing on the respondent's response. Following receipt of the response, the special investigator may conduct further investigation and may compel the respondent to answer questions, furnish

documents, and present information deemed relevant to the investigation. In the course of the investigation, the respondent's willful failure to provide relevant information, to answer questions fully, or to furnish documents and the respondent's misrepresentation in a disclosure are misconduct, regardless of the matters asserted in the grievance. Upon completion of the investigation, the special investigator shall do one of the following:

**Section 10. SCR 22.26 is amended to insert the following comment after that Rule:**

**COMMENT**

SCR 22.26 has been applied to administrative suspensions. *Office of Lawyer Regulation v. Scanlan (In re Scanlan)*, 2006 WI 38, 290 Wis. 2d 30, 712 N.W.2d 877.

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

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Hon. Gerald Ptacek, Chair, OLR Procedure Review Committee

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Marsha Mansfield, Chair, OLR Process Subcommittee