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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 Charging Process FOR AN ORDER CREATING Supreme Court Rules 22.02 (6)(d), 22.05 (1)(e), and 22.11 (2)(b) and (c), REPEALING Supreme Court Rule 22.10 (7)(b) and (c), AMENDING Supreme Court Rules 22.02 (4) and (6)(a), 22.05 (2), and 22.10 (4) and RENUMBERING AND AMENDING Supreme Court Rules 22.10 (7)(a) and 22.11 (2).**

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

### **PETITION**

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

**Section 1. SCR 22.02 (4) is amended to read:**

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

**Section 2. SCR 22.02 (6)(a) is amended to read:**

**22.02 (6)(a)** Close the matter for lack of an allegation of possible misconduct or medical incapacity or lack of sufficient information of cause to proceed. The director shall ~~notify~~ provide to the grievant written notice of the decision to close, accompanied by a brief written statement of reasons for the director's decision. The notice shall inform the grievant ~~in writing~~ that the grievant may obtain review by a preliminary review panel of the director's closure by submitting a written request to the director. The request for review must be received by the director within 30 days after the date of the letter notifying the grievant of the closure. The director shall send the request for review to the chairperson of the preliminary review committee, who shall assign it to a preliminary review panel. Upon a timely request by the grievant for additional time, the

director shall report the request to the chairperson of the preliminary review committee, who may extend the time for submission of additional information relating to the request for review.

**Section 3. SCR 22.02 (6)(d) is created to read:**

**22.02 (6)(d)** Obtain the respondent's consent to the imposition of a public or private reprimand and proceed under SCR 22.09.

**Section 4. SCR 22.05 (1)(e) is created to read:**

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

**Section 5. SCR 22.05 (2) is amended to read:**

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

**Section 6. SCR 22.10 (4) is amended to read:**

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

**Section 7. SCR 22.10 (7)(a) is renumbered to SCR 22.10 (7) and amended to read:**

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

**Section 8. SCR 22.10 (7)(b) and (c) are repealed.**

**Section 9. SCR 22.11 (2) is renumbered to SCR (2)(a) and amended to read:**

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

**Section 10. SCR 22.11 (2)(b) is created to read:**

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

**Section 11. SCR 22.11 (2)(c) is created to read:**

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

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

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Hon. Gerald Ptacek, Chair, OLR Procedure Review Committee

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Paul Schwarzenbart, Chair, Charging Process Subcommittee