



STATE BAR OF WISCONSIN
Leaders in the Law. Advocates for Justice.®

October 14, 2019

Sent Via Electronic Mail and Regular Mail

Clerk of Supreme Court
Attention: Deputy Clerk-Rules
P.O. Box 1688
Madison, WI 53701-1688
clerk@wicourts.gov

RE: Position of State Bar of Wisconsin Regarding Rule Petition 19-12 Submitted by OLR
Process Review Committee

Dear Clerk of Supreme Court:

We are writing on behalf of the Board of Governors of the State Bar of Wisconsin to provide comments regarding Petition 19-12 submitted by the OLR Process Review Committee.

This Petition provides for two changes to the Wisconsin Rules of Professional Conduct. The first change amends SCR 20:1.8(3) to provide that lawyer may not make an agreement limiting any “person’s” right to report the lawyer’s conduct to disciplinary authorities. The second change to the Wisconsin Rules of Professional Conduct provides for a change to SCR 20:8.3(a) and (b) to provide that a lawyer shall inform the appropriate professional authority in the event a lawyer “reasonably believes” that another lawyer or a judge has committed a violation of the applicable Rules.

The Board of Governors has reviewed these proposed changes and with regard to Section 1 of the Petition, the Board of Governors supports the proposed change. The Board of Governors believes that any agreement that a lawyer enters into should not limit in anyway a person’s right to report the lawyers conduct to disciplinary authorities whether that person is a client or another person. The Board of Governors believes that this change is reasonable and appropriate.

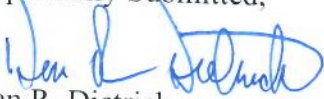
The Board of Governors also reviewed the proposed changes in Section 2 of the Petition. These changes would change the word “knows” to “reasonably believes.” The Board of Governors does not support this change to the language of SCR 20:8.3. The Board of Governors believes that the current language, which is consistent with the Model Rules of Professional Conduct, provides appropriate direction by requiring a lawyer who knows that another lawyer has acted inappropriately with conduct that raises a substantial question as to the lawyer’s honesty, trustworthiness or fitness as a lawyer to report that information to the appropriate professional authority. The same is true for the language found in SCR 20:8.3(b) regarding the conduct of a judge.

The Board of Governors also believes that the change to a “reasonably believes” standard will create confusion and uncertainty regarding whether a lawyer has sufficient information to require the lawyer to report information to an appropriate professional authority. The creation of language

that results in confusion or uncertainty is not helpful to the regulatory process and places lawyers in a challenging professional setting where it is unclear as to whether or not the lawyer has sufficient knowledge or factual background to require a report to the appropriate professional authority.

Based upon these considerations, the Board of Governors would support the change identified in Section 1 of the Petition but would oppose the change proposed in Section 2 of the Petition. We request the opportunity to present these positions to the Court at the public hearing scheduled for December 9, 2019.

Respectfully Submitted,



Dean R. Dietrich
State Bar of Wisconsin
Board of Governors