

SUPREME COURT OF WISCONSIN

No. 14-05

In the Matter of the Amendment of
Supreme Court Rule 20:3.4(a)

FILED

JUL 6, 2015

Diane M. Fremgen
Clerk of Supreme Court
Madison, WI

On November 10, 2014, Attorney Christopher L. Wiesmueller filed a petition asking this court to amend Supreme Court Rule (SCR) 20:3.4(a). Attorney Wiesmueller contends that SCR 20:3.4(a) needs clarification to assist practitioners in steering away from potential pitfalls and rule violations, and to advance preservation of evidence. He asks the court to amend the rule as follows:

SCR 20:3.4 Fairness to opposing party and counsel. A lawyer shall not: (a) ~~unlawfully~~ obstruct another party's access to evidence, unless through legal process; or ~~unlawfully~~ alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;
. . .

The rule petition stems from a public reprimand that Attorney Wiesmueller received in 2013. See Public Reprimand of Christopher Wiesmueller, 2013-11.

The court discussed this petition at open rules conference on December 5, 2014, and voted to solicit public comment before deciding whether to schedule a public hearing. On December 29, 2014, a letter

was sent to interested persons, seeking input. Comments were received from the Office of Lawyer Regulation (OLR) on January 28, 2015, and from Attorney Dean Dietrich on February 5, 2015, both opposing the proposed amendment. Both the OLR and Attorney Dietrich note that SCR 20:3.4(a) is identical to the current language of American Bar Association (ABA) Model Rule 3.4(a). The current comments to Wisconsin's rule are also identical to the ABA comments. The OLR asserts that "this consistency with the Model Rule is important. It provides for uniform application of the rule and allows the Court to consider relevant precedent from other jurisdictions." The petitioner, Attorney Wiesmueller, filed a response on February 12, 2015, maintaining that the change would aid practitioners.

The court discussed this petition at open rules conference on February 26, 2015, and, persuaded by the comments filed in opposition to the petition, voted to deny the petition without holding a hearing. See Wis. S. Ct. IOP III.A. On June 10, 2015, the court unanimously approved an order denying the petition, with Justice Shirley S. Abrahamson stating she would write separately.

IT IS ORDERED that the petition to amend Supreme Court Rule 20:3.4(a) is denied.

Dated at Madison, Wisconsin, this 6th day of July, 2015.

BY THE COURT:

Diane M. Fremgen
Clerk of Supreme Court

¶1 SHIRLEY S. ABRAHAMSON, J. (*concurring*). I write separately to emphasize that this denial of Attorney Wiesmueller's petition does not mean his petition is wholly without merit. On February 6, 2015, I filed a rule petition proposing creation of a Lawyer Regulation Review Committee to undertake a comprehensive review of the office of lawyer regulation, including review of the Rules of Professional Conduct for Attorneys. See Rule Petition 15-01: In the Matter of the Review of the Office of Lawyer Regulation. The court unanimously agreed to conduct a public hearing on this proposal in the Fall of 2015. As I indicated during our open administrative rules conference on February 26, 2015, the question whether there is a need to clarify SCR 20:3.4(a), as Attorney Wiesmueller suggests, is precisely the kind of issue a Review Committee might consider.

