Wisconsin Referee Bench Manual

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While every effort has been made to ensure that the citations of authority are accurate and the suggested procedures are appropriate, this Bench Manual (as any practice aid) must be used with caution. The user is advised to constantly test the Bench Manual's citations and suggested procedures against the user's continuing original research, experience, and common sense.

Corrections, suggestions and comments on this bench manual may be directed to

The Referee's Bench Manual Committee in care of the Wisconsin Supreme Court

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1. Preliminary Considerations

A. Essential Statutes and Rules

The primary statutory and code provisions for referees in disciplinary matters are:

SCR Ch. 20
- Rules of Professional Conduct for Attorneys

SCR Ch. 21
- Lawyer Regulation System

SCR Ch. 22
- Procedures for the Lawyer Regulation System

Ch. 802, Wis. Stats.
- Civil Procedure - Pleadings, Motions, and Pre-Trial Practice

Ch. 804, Wis. Stats.
- Civil Procedure - Depositions and Discovery

Chs. 901-911, Wis. Stats.
- Wisconsin Evidence Code

SCR 22.09(2)
SCR 22.13(3)
SCR 22.30(1)
SCR 22.34(10)
SCR 22.36(5)

B. Appointment of a Referee

The Clerk of the Supreme Court shall select and the Chief Justice shall appoint a referee from a permanent panel of persons appointed by the Supreme Court in the following cases:

SCR 22.12

1) in each disciplinary proceeding in which the Office of Lawyer Regulation (OLR) files a complaint, unless the complaint is accompanied by an SCR 22.12 stipulation which the Court approves;

SCR 22.13(3)
SCR 22.34(10)

2) in each medical incapacity proceeding in which OLR files a petition, unless the petition is accompanied by an SCR 22.34(10) stipulation which the Court approves;

SCR 22.30(1)

3) upon receipt of a petition for reinstatement from a suspended or revoked attorney;

SCR 22.36(5)

4) following the investigation of a petition for reinstatement from a medical incapacity suspension or removal of conditions; and

SCR 22.09

5) upon request of OLR for appointment of a referee to review an agreement for consensual private or public reprimand.

Referees should, at the earliest possible time, check for possible conflicts of interest. If a conflict is discovered, the referee should either promptly withdraw or disclose the conflict to the parties and discuss whether withdrawal is appropriate.

Sample: An order appointing referee is included in the Appendix.

C. Care of Original Documents, Papers, and Orders

1) The referee shall file with the Clerk of the Supreme Court the original of any order or paper generated by the referee. The term "paper" is broadly construed and may include e-mail exchanges between the referee and the parties. Original pleadings, motions, and papers are to be filed by the parties with the Clerk, with copies served on the referee. The referee should not keep original documents filed in a disciplinary proceeding. If a referee receives an original, the referee should return it to the party for filing with the Clerk or forward it to the Clerk and keep a copy.

2) The referee shall maintain copies of all orders, documents, correspondence and papers as the referee's working file. Referees may wish to print off and include important e-mail exchanges in the working file. However, the working file does not include correspondence or discovery materials exchanged between the parties where a courtesy copy is sent to the referee, unless the correspondence or discovery material is filed in connection with a motion or marked as an exhibit at a hearing. At the conclusion of the proceeding, the referee shall organize the working file and file it with the clerk.

SCR 22.12
SCR 22.34(10)

D. Approval of Stipulation Without Appointment of Referee

If OLR files a disciplinary complaint or a petition for medical incapacity and a stipulation signed on behalf of both OLR and the respondent attorney as to the proposed facts, conclusions of law, and discipline to be imposed, the Supreme Court may consider the complaint or petition and stipulation without appointing a referee. If the Supreme Court approves the stipulation, no referee will be appointed. If the Court rejects the stipulation, a referee will be assigned and the stipulation has no evidentiary value.

SCR 21.14(1)
§ 757.19, Wis. Stats.
SCR 60.04(4)

E. Recusal

A referee may not take part in any matter in which the referee is a complaining person, grievant, or respondent or in which their own interests outside of their official duties under SCR Chs. 21 and 22 reasonably may be perceived to impair their impartiality or when a judge similarly situated would be disqualified under § 757.19, Wis. Stats., or recusal would be required under SCR 60.04(4). A motion for recusal may be filed with the referee.

2. Pre-Hearing Procedure

SCR 22.11-22.16
SCR 22.37
§ 801.15, Wis. Stats.
Ch. 802, Wis. Stats.,
Ch. 804, Wis. Stats.

A. Rules of Procedure

SCR 22.16(1)

1) The rules of civil procedure and evidence apply in disciplinary proceedings except as otherwise provided in the rules.

SCR 22.37

2) SCR Ch. 22 time limitations are directory and not jurisdictional, except as otherwise provided in SCR Chs. 21 and 22. The 10-year statute of limitations in SCR 21.18 is jurisdictional. The 20 days for the filing of an appeal is usually considered jurisdictional.

§ 801.15, Wis. Stats.,
§ 990.001(4), Wis. Stats.

3) Computation of Time. The statutes contain guidance on whether first and last days, weekends, etc., are to be counted.

Ch. 802, Wis. Stats.

4) Pleadings

§ 802.01, Wis. Stats.

a) Pleadings allowed; form of motions. Motions should be in writing, stating with particularity the grounds therefor and the relief or order sought.

§ 802.02, Wis. Stats.

b) General rules of pleading. Notice pleadings may be used as in a civil case, though OLR may file more detailed pleadings to form the basis for a default.

Ch. 804, Wis. Stats.

5) Discovery

§ 804.01, Wis. Stats.

a) The scope of discovery, unless limited by order, includes any unprivileged matter which is relevant.

§ 804.02, Wis. Stats.

b) Testimony may be perpetuated by deposition.

§§ 804.03–804.07, Wis. Stats.

c) Rules for taking depositions are the same as in a civil case.

§ 804.08, Wis. Stats.

d) Interrogatories to parties are the same as in a civil case.

§ 804.09, Wis. Stats.

e) Production of documents and things (and entry upon land for inspection and other purposes) are the same as in a civil case.

§ 804.11, Wis. Stats.

f) Requests for admission are the same as in a civil case.

6) Failure to comply with procedural statutes or obey orders

SCR 22.16(1)
§ 804.12, Wis. Stats.
§ 802.10(7), Wis. Stats.
§ 805.03, Wis. Stats.

a) The referee in a grievance proceeding has the powers of a judge trying a civil case, including all non-contempt remedies for failure to obey orders.

Disciplinary Proc. Against Semancik, 2005 WI 139, ¶26, 286 Wis. 2d 24, 704 N.W.2d 581

b) The referee may strike pleadings and enter a default judgment as a sanction for "egregious procedural violations," such as failure to comply with discovery.

§ 805.07, Wis. Stats.
SCR 22.42

7) Subpoenas

Ch. 885, Wis. Stats.

a) The attorney for OLR and either the attorney for the respondent or an unrepresented respondent have the power to issue and serve subpoenas.

SCR 22.42(4)

b) The referee shall rule on a challenge to the validity of a subpoena.

SCR 22.42(2)

c) The use of subpoenas for discovery shall be pursuant to an order of the referee.

SCR 22.11

B. Initiation of Action

SCR 22.11(1)

1) OLR shall institute formal disciplinary action by filing with the Clerk of the Supreme Court a complaint alleging misconduct, along with an order to answer, and serving a copy of each upon the respondent attorney.

SCR 21.05(1) & (2)
SCR 22.11(3)

2) OLR may assign in-office or outside retained counsel to a case.

SCR 22.11

C. Complaint

SCR 22.11(2)

1) The complaint shall set forth "only those facts and misconduct allegations for which the preliminary review panel determined there was cause to proceed and may set forth the discipline or other disposition sought." Even though the elements of a violation may be present, prosecutorial discretion would allow OLR to not pursue a particular charge even though the Preliminary Review Committee (PRC) found cause to proceed.

SCR 22.11(2)
SCR 22.20
SCR 22.22

Disciplinary Proc. Against Johns, 2014 WI 32, 353 Wis. 2d 746, 847 N.W.2d 179

2) Facts and allegations arising in summary suspension for criminal conviction and in reciprocal discipline cases may be set forth without a finding of cause to proceed by a preliminary review panel.

SCR 22.13

D. Service of Complaint

SCR 22.13(1)
§ 801.11, Wis. Stats.

1) An order to answer is served with the complaint rather than a summons. The complaint and order to answer shall be served upon the respondent in the same manner as a summons, as provided in § 801.11(1), Wis. Stats.

2) Service can be admitted.

SCR 22.13(1)

3) If, with reasonable diligence, the respondent cannot be served under § 801.11(1)(a) or (b), Wis. Stats., service may be made by certified mail at the last known address furnished by the respondent to the State Bar.

SCR 22.13(5)

4) The parties shall file the originals of pleadings and papers with the Clerk of the Supreme Court, with copies to be served upon the parties and the referee, once appointed. If the referee receives an original, see 1.C. above.

SCR 22.11(5)
§ 802.09, Wis. Stats.

E. Amendment of Complaint

SCR 22.15(2)(d)

1) Whether the complaint may need to be amended should be considered at the scheduling conference and made part of the scheduling order.

§ 802.09(2), Wis. Stats.

Disciplinary Proc. Against Knickmeier, 2004 WI 115, ¶94, 275 Wis. 2d 69, 683 N.W.2d 445

Disciplinary Proc. Against Watson, 165 Wis. 2d 493, 496-97, 477 N.W.2d 488 (1991)

2) OLR may amend the complaint at any time consistent with the rules of civil procedure, even after the close of the hearing.

SCR 22.14

F. Answer

SCR 22.14(1)

1) A respondent attorney shall file an answer with the Clerk of the Supreme Court within 20 days after the service of the complaint, unless the referee, for cause, has fixed a different time. The answer may consist of motions to dismiss, affirmative defenses, and specific pleadings in response to each allegation in the disciplinary complaint.

§ 802.01, Wis. Stats.

2) The purpose of an answer is to admit or deny in short and plain terms the averments of the disciplinary complaint.

Disciplinary Proc. Against Sommers, 2012 WI 33, ¶12, 339 Wis. 2d 580, 811 N.W.2d 387

§ 802.09, Wis. Stats.

3) An answer may not include a counterclaim. The rules do not contemplate a formal counterclaim in disciplinary proceedings. An answer may be amended as per the civil procedure rule.

G. Defenses

§ 802.06, Wis. Stats.

Every defense, in law and fact, shall be asserted in the answer or by motion.

H. Substitution

SCR 22.13(4)

1) Either OLR or the respondent may file a motion for substitution of the referee within 10 days of notice of apointment of the referee.

2) The motion for substitution is to be filed with the Clerk of the Supreme Court and not the referee.

3) The filing of the motion does not stay the proceedings before the referee, unless ordered by the Supreme Court.

4) One timely motion filed by the director and one timely motion filed by the respondent shall be granted as a matter of right. Additional motions shall be granted for good cause.

SCR 21.14(1)
SCR 60.04(4)
§ 757.19, Wis. Stats.

5) A motion for recusal should be filed with the referee.

SCR 20:1.16

I. Withdrawal of Counsel

A lawyer may withdraw from representing a client under the circumstances provided by SCR 20:1.16(a) or (b).

J. Scheduling Conference

SCR 22.15(1)-(2)

1) A referee shall hold a scheduling conference within 20 days after the time for answer and may do so by telephone.

Sample: Letter setting up scheduling conference is included in the Appendix.

SCR 22.15(1)

2) If no answer is filed, the referee may hear any motions, including a motion for default, at the scheduling conference.

3) A scheduling conference may, but need not, be recorded.

SCR 22.16(2)
§ 802.10, Wis. Stats.

4) A scheduling conference should set the date, time, and place of the hearing, which shall be public, unless otherwise provided by law or SCR Ch. 22, and which shall be held in the county of the respondent's principal office or, in the case of a non-resident attorney, in the county designated by OLR, or a different location designated by the referee for good cause. It should also cover the following: a) the form, extent and time limits for depositions and other discovery; b) defining and simplifying the issues for trial; c) the necessity or desirability of amending the pleadings; d) stipulations of fact and agreements regarding documentary evidence; e) trial briefs; and f) any other matters which may aid the disposition of the proceedings.

Other matters which may aid disposition of the proceedings include the following:

a) designation of, or setting a time for designation of, both expert and lay witnesses with the parties to provide the referee and each other the name, address, telephone number, area of expertise, and summary of relevant opinions which will be offered by an expert witness; and in the case of lay witnesses, the background information, as well as a summary of relevant facts which will be offered;

b) whether the parties anticipate filing motions in limine; or

c) pre- or post-hearing briefs.

5) The refereee shall issue a scheduling order.

6) There may be more than one scheduling conference and scheduling order.

7) Referees should use scheduling conferences and the orders issued therefrom to control the proceedings and limit the issues to be heard and considered at the final hearing. The written scheduling order should contain any information which could be relevant to a later appeal.

Samples: Three scheduling orders are included in the Appendix.

K. Default Judgment

SCR 22.14(1)

1) A respondent is required to file an answer within 20 days after the service of the complaint unless the referee sets a different time.

§ 806.02(1), Wis. Stats.

a) Upon motion, a recommendation for default judgment can be rendered if no issue of law or fact has been joined and if the time for joining issues has expired.

Disciplinary Proc. Against Booker, 2015 WI 2, ¶10, 360 Wis. 2d 179, 857 N.W.2d 890

b) A recommendation for default should indicate that the factual allegations of OLR's complaint are deemed true for purposes of the proceeding, and provide a sufficient factual basis for determining that the alleged misconduct occurred.

c) The Supreme Court may impose the default judgment upon the referee's recommendation.

Samples: A referee's report in a default case, an order granting default, and a referee's report on motion for default are included in the Appendix.

§ 802.10, Wis. Stats.
§ 804.12, Wis. Stats.
§ 805.03, Wis. Stats.

Disciplinary Proc. Against Kelly, 2012 WI 55, ¶¶21-25, 341 Wis. 2d 104, 814 N.W.2d 844

d) A default judgment may also be granted as a sanction for failing to comply with procedural statutes, discovery, or the referee's orders. Note, however, that the striking of a timely answer and the granting of a default judgment is considered a "drastic sanction" and must be accompanied by an explicit finding of egregious or bad faith conduct.

SCR 22.41

L. Related Matters/Pending Civil or Criminal

A referee or OLR shall not defer, except for cause, a proceeding or the processing of a matter because of substantial similarity to the material allegations of pending criminal or civil litigation.

SCR 22.14(2)

M. No Contest Plea

1) A respondent may by answer plead no contest to allegations of misconduct in the complaint.

2) The referee shall make a determination of misconduct with respect to each allegation to which no contest is pled and for which the referee finds an adequate factual basis in the record, even if other issues are contested.

SCR 22.12
SCR 22.34(10)

N. Stipulations

1) The parties may file stipulations regarding evidence, facts, conclusions of misconduct, and/or level of discipline.

2) Whether or not to accept a stipulation is within the discretion of the referee, and the referee must make findings of fact and conclusions of law regarding misconduct, and may make an independent recommendation as to discipline.

3) Sometimes, a referee is appointed at approximately the same time as the parties file a dispositive stipulation. In such instances, the referee should advise the Supreme Court and the parties, in writing, that the referee will not participate in the matter pending the Court's review and consideration of the stipulation. Sometimes, a dispositive stipulation is filed after the referee is appointed, but before the referee has had substantive involvement in a proceeding. In such instances, the referee may file a brief report and recommendation regarding the stipulation.

Sample: A referee's report based on a stipulation and a referee's report following stipulation to facts and misconduct; sanction disputed are included in the Appendix.

§ 802.08, Wis. Stats.

Disciplinary Proc. Against Wood, 2013 WI 11, ¶¶3-4, 345 Wis. 2d 279, 825 N.W.2d 473

Disciplinary Proc. Against Gende, 2012 WI 107, ¶12, 344 Wis. 2d 1, 821 N.W.2d 393

O. Summary Judgment

Summary judgment motions may be brought, and may obviate the need to hold an evidentiary hearing.

3. Miscellaneous Pre-Hearing Issues

A. Due Process

Disciplinary Proc. Against Eisenberg, 117 Wis. 2d 332, 344 N.W.2d 169 (1984)

1) Due process does not attach until a formal complaint is filed. Until that time, the respondent attorney is entitled to "fairness."

State v. Hersch, 73 Wis. 2d 390, 243 N.W.2d 178 (1976)

Disciplinary Proc. Against Gamino, 2005 WI 168, ¶48, 286 Wis. 2d 558, 707 N.W.2d 132

2) An attorney's constitutional right of due process involves only the attorney's right to prior notice of charges, right to prepare to defend the charges, and right to a full hearing on the charges. In addition, an implied but fundamental component of due process is an impartial decision maker.

B. Right to Counsel

Disciplinary actions are civil in nature. A respondent may be represented by legal counsel, but has no right to appointed counsel.

SCR 22.34(13)

In a medical incapacity case, a referee may appoint counsel to represent the attorney who is the subject of the petition.

C. Self-Incrimination

Disciplinary Proc. Against Goluba, 2013 WI 32, ¶22 347 Wis. 2d 1, 829 N.W.2d 161

Disciplinary Proc. Against Schalow, 131 Wis. 2d 1, 388 N.W.2d 176 (1986)
§ 905.13(4), Wis. Stats.

State v. Postorino, 53 Wis. 2d 412, 193 N.W.2d 1 (1972)

The Fifth Amendment to the United States Constitution, as well as Article I, Section 8 of the Wisconsin Constitution, apply in attorney disciplinary proceedings and a respondent attorney may not be compelled to incriminate himself or herself. However, a disciplinary action is not a criminal proceeding, and if a witness declines to answer a question claiming privilege under the Fifth Amendment or Article I, Section 8, Wisconsin case law makes it clear that "taking the Fifth Amendment does not foreclose a court in a civil action from drawing an inference from the invocation of the Fifth Amendment on an issue involving grounds for discipline," and that "the inference which may be drawn depends upon the question asked and the weight to be given the inference depends upon the facts." In other words, the referee may draw an adverse inference if a respondent invokes the Fifth Amendment.

D. Double Jeopardy

A double jeopardy argument that OLR may not prosecute and the Supreme Court may not sanction an attorney for actions which may be criminal in nature if a criminal prosecution has occurred or is imminent, is not valid. The term "double jeopardy" refers to the imposition of multiple punishments by a single governmental entity for the same criminal offense; Article I, Section 8 (1) of the Wisconsin Constitution and the Fifth Amendment to the United States Constitution. A crime is defined as conduct which is prohibited by state law and punishable by fine or imprisonment or both. A disciplinary action is not a criminal proceeding.

SCR 21.15(4)
SCR 20.8.4(h)
SCR 22.03(2)
SCR 22.03(6)
SCR 22.04(1)
SCR 22.001(9)(b)

State v. Kennedy, 20 Wis. 2d 513, 123 N.W.2d 449 (1963)

Disciplinary Proc. Against Kovac, 2012 WI 117, 344 Wis. 2d 522, 823 N.W.2d 371

Disciplinary Proc. Against Guenther, 2012 WI 116, 344 Wis. 2d 528, 823 N.W.2d 266

E. Duty to Cooperate

1) Every attorney has the obligation to cooperate with OLR's investigation of a grievance, complaints filed by OLR, and petitions for reinstatement.

2) A failure to cooperate, even if no other misconduct is proven, is itself misconduct.

F. Claim Preclusion and Issue Preclusion

Claim preclusion (formerly *res judicata*) and issue preclusion (formerly collateral estoppel) may be applicable in lawyer disciplinary matters.

1) Claim preclusion

<u>Wickenhauser v. Lehtinen</u>, 2007 WI 82, ¶¶22-38, 302 Wis. 2d 41, 734 N.W.2d 855

a) The elements of claim preclusion are "(1) an identity between the parties and their privies in the prior and present suits, (2) an identity in the causes of action between the two suits, and (3) a final judgment on the merits in a court of competent jurisdiction." The Supreme Court has described claim preclusion in general terms as "a final judgment is conclusive in all subsequent actions between the same parties [or their privies] as to all matters which were litigated or which might have been litigated in the former proceedings."

b) Referees do not have the authority to confirm, reverse, or remand decisions of State, Tribal, or Federal trial or appellate courts. Those findings and conclusions and judgments cannot be challenged and/or collaterally attacked through the disciplinary proceeding. It is the function of the referee to determine whether the attorney's conduct constitutes a violation of the Rules of Professional Conduct for Attorneys.

<u>Disciplinary Proc. Against Arthur</u> (2007) (located in the Wisconsin Attorneys' Professional Discipline Compendium)

c) Claim preclusion may be applied to preclude litigation of issues that were previously resolved in court.

2) Issue preclusion

Mrozek v. Intra Financial, 2005 WI 73, ¶¶17-21, 281 Wis. 2d 448, 699 N.W.2d 54

Disciplinary Proc. Against Widule, 2003 WI 34, ¶26, n.7, 261 Wis. 2d 45, 660 N.W.2d 686

Paige KB v. Steven GB, 226 Wis. 2d 210, 594 N.W.2d 370 (1999)

Michelle T. v. Crozier, 173 Wis. 2d 681, 495 N.W.2d 327 (1993)

a) "Issue preclusion addresses the effect of a prior judgment on the ability to re-litigate an identical issue of law or fact in a subsequent action." It precludes re-litigation of issues before a referee that were previously resolved in court. "In order for issue preclusion to be a potential limit on subsequent litigation, the question of fact or law that is sought to be precluded actually must have been litigated in a previous action and be necessary to the judgment."

Disciplinary Proc. Against Lucareli, 2000 WI 55, ¶¶27-28, 235 Wis. 2d 557, 611 N.W.2d 754

Disciplinary Proc. Against Ward, 2005 WI 19, ¶26 n.9, 278 Wis. 2d 1, 691 N.W.2d 689

Disciplinary Proc. Against Trewin, 2004 WI 116, ¶42, 275 Wis. 2d 116, 684 N.W.2d 121

Disciplinary Proc. Against Kratz, 2014 WI 31, ¶65, 353 Wis. 2d 696, 851 N.W.2d 219

b) The Supreme Court has declined to apply issue preclusion in several reported disciplinary matters in which it was raised.

4. Conduct of the Hearing

SCR 22.16(1)

A. The Hearing and Referee's Powers

A referee appointed by the Supreme Court has the powers of a judge trying a civil case and shall conduct the hearing as the trial of a civil action to the court.

SCR 22.16(2)

B. Venue

The hearing shall be held in the county of the respondent's principal office or, if the respondent is not a resident of Wisconsin, in a county designated by OLR. The referee may change the location for cause, a term that is not defined and therefore a matter of referee discretion.

C. Record of Hearing

SCR 22.16(1)
SCR 71.01-71.03

1) A court reporter appointed by the referee shall make a verbatim record of the proceedings at the hearing.

§ 906.03, Wis. Stats.

2) Each witness, before testifying, should be sworn as provided by statute by either the referee or the court reporter.

3) If needed, either party may assist the referee in securing a court reporter.

D. Exhibits and Post-Hearing Submissions; Referee "Working File"

1) Exhibits and Post-Hearing Submissions. It is the referee's responsibility to ensure that a complete and organized record of the evidentiary hearing is created and filed with the Clerk of the Supreme Court prior to or simultaneously with the filing of the referee's report and recommendation.

a) The hearing record shall contain all original hearing transcripts, all original exhibits marked or identified at the hearing, whether or not received into evidence, and a completed Exhibit List showing which exhibits were offered, received, withdrawn, or denied.

2) Referee "Working File". During the disciplinary proceeding, the referee shall maintain a "working file" consisting of notes or copies of documents the referee might create in the course of the disciplinary proceeding. This working file shall be filed with the Clerk of the Supreme Court prior to or simultaneously with the filing of the referee's report and recommendation. The "working file" is not made a part of the public case record and is not available for review by the parties or the public, unless ordered by the Supreme Court.

SCR 22.16(3)

E. Public Hearing

Unless otherwise provided by law or SCR Ch. 22 (see, e.g., medical incapacity), a hearing before the referee and any paper filed in a disciplinary proceeding is public.

F. Rules Applicable to Hearing

SCR 22.16(1)

1) In a disciplinary hearing, the rules of civil procedure and evidence apply.

SCR 22.31(5)

2) In a reinstatement hearing, the rules of civil procedure apply, but the rules of evidence do not apply. The referee may consider any relevant information presented.

SCR 22.34(9)
SCR 22.34(12)

3) In a medical incapacity proceeding, the rules of civil procedure and evidence apply. Medical incapacity proceedings are confidential until the Supreme Court issues a final order.

§ 805.10, Wis. Stats.

G. Examination of Witnesses; Arguments

The referee may control the order and method of proof, as well as statements and arguments of counsel.

§ 805.11, Wis. Stats.,
§ 901.03, Wis. Stats.

H. Objections

A party raising an objection must specify the grounds of the objection and shall be given an opportunity by the referee to do so.

§ 804.07, Wis. Stats.

I. Use of Depositions in Court Proceedings

Any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness was present and then testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof.

J. Evidence

Chs. 901-911, Wis. Stats.

State v. Beaudry, 53 Wis. 2d 148, 191 N.W.2d 842 (1971);

Disciplinary Proc. Against Eisenberg, 117 Wis. 2d 332, 344 N.W.2d 169 (1984).

1) The rules of evidence apply in disciplinary hearings before referees as in civil trials to the court.

§ 807.13(2), Wis. Stats.

Disciplinary Proc. Against Nunnery, 2011 WI 39, ¶11, 334 Wis. 2d 1, 798 N.W.2d 239

2) A referee may permit oral testimony communicated by telephonic or audiovisual means, subject to cross-examination, when the parties stipulate or the proponent shows good cause to the court. Appropriate considerations are:

a) whether any undue surprise or prejudice would result;

b) whether the proponent has been unable, after due diligence, to procure the physical presence of the witness;

c) the convenience of the parties and the proposed witness, and the cost of producing the witness in relation to the importance of the offered testimony;

d) whether the procedure would allow full effective cross-examination, especially where availability to counsel of documents and exhibits available to the witness would affect such cross-examination;

e) the importance of presenting the testimony of witnesses in open court, where the finder of fact may observe the demeanor of the witness, and where the solemnity of the surroundings will impress upon the witness the duty to testify truthfully;

f) whether the quality of the communication is sufficient to understand the offered testimony;

g) whether a physical liberty interest is at stake in the proceeding; and

h) such other factors as the referee may, in each individual case, determine to be relevant.

3) Testimony of Incarcerated Persons

a) Arrangements can be made for testimony by incarcerated persons. In lawyer regulation proceedings, this is frequently accomplished by the proponent of the evidence arranging for telephonic or audiovisual testimony.

Sample: An order for inmate availability is included in the Appendix.

b) If a personal appearance is necessary, the referee upon application can issue a Writ of Habeas Corpus ad Testificandum.

Sample: A petition and order for a writ of habeas corpus ad testificandum is included in the Appendix.

4) Sealing Documents

a) Referees and the Supreme Court may, sua sponte or on motion, order documents and evidence sealed, such as where the record contains extremely sensitive information, e.g., medical treatment or personal financial information.

Disciplinary Proc. Against Voss, 2011 WI 2, ¶40, 331 Wis. 2d 1, 795 N.W.2d 415

Disciplinary Proc. Against Gamino, 2011 WI 42, ¶20, 334 Wis. 2d 279, 801 N.W.2d 299

Reinstatement of Fisher, 2011 WI 16

Bilder v. Delavan, 112 Wis. 2d 539, 554-58, 334 N.W.2d 539 (1983)

b) The presumption is to disclose all evidence unless there is a clear statutory exception, common law limitation, constitutional rights implication, or an overriding public interest in keeping the records confidential. A party seeking non-disclosure must demonstrate with particularity that the administration of justice requires the records to be sealed. The referee should balance the public interest in disclosure versus nondisclosure.

K. Subpoenas

SCR 22.42(2)

1) Counsel for OLR, counsel for the respondent, or an unrepresented respondent in any disciplinary proceeding pending before a referee have the power to issue and serve subpoenas to require the attendance of witnesses and the production of documentary evidence. The use of subpoenas for discovery in matters pending before a referee shall be pursuant to an order of the referee. The service, enforcement, or challenge to any subpoena issued under SCR 22.42 shall be governed by Ch. 885, Wis. Stats., except as otherwise provided in SCR Ch. 22.

Sample: A subpoena duces tecum is included in the Appendix.

SCR 22.42(5)

2) A witness subpoenaed to appear at a disciplinary or medical incapacity hearing before the referee shall be paid subpoena fees and mileage by the party on whose behalf the witness appears as allowed in §§ 885.05 and 885.06(2), Wis. Stats.

§ 904.04, Wis. Stats.
§ 906.08, Wis. Stats.
§ 906.09, Wis. Stats.
§ 908.06, Wis. Stats.

L. Special Evidentiary Issues

1) Evidence of a person's character or a trait of the person's character is not admissible for the purpose of proving that the person acted in conformity therewith on a particular occasion, with several exceptions, such as for the purpose of proving proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident. If evidence of character is admissible, it may be in the form of an opinion and on cross-examination, inquiries are allowable if they are relevant to specific instances.

§ 906.08, Wis. Stats.

2) The credibility of a witness can be attacked or supported by evidence in the form of reputation or opinion as to a reputation for truthfulness or untruthfulness. This evidence can be offered on behalf of respondent at any time and, as to a witness, only after the reputation for truthfulness has been attacked.

§ 906.09, Wis. Stats.

3) Evidence of conviction of a crime or adjudication of delinquency may be used to impeach a witness.

§ 908.06, Wis. Stats.

4) When a hearsay statement has been admitted in evidence, the credibility of the declarant may be attacked and if attacked, may be supported by any evidence which would be admissible for those purposes if the declarant had testified as a witness.

5) A referee has the discretion to accept, reject, or limit the number of "character letters."

M. No Contest Pleas

SCR 22.14(2)

A respondent by answer or stipulation may plead no contest to allegations of misconduct in the complaint. The referee shall make a determination of misconduct in respect to each allegation to which no contest is pleaded and for which the referee finds an adequate factual basis in the record. The referee shall not make a determination of misconduct if there is not an adequate factual basis in the record. In a subsequent disciplinary or reinstatement proceeding, it shall be conclusively presumed that the respondent engaged in misconduct determined on the basis of a no contest plea.

Ch. 785, Wis. Stats.

N. Contempt of Court

Even though SCR 22.16 gives the referee the powers of a judge trying a civil case, the rule is silent as to whether a referee has contempt powers. Chapter 785, Wis. Stats., defines contempt and provides that a court of record may find a person in contempt and impose punitive and/or remedial sanctions against a person found in contempt. Since a referee is not a "court of record" and the Supreme Court Rules do not specifically provide that a referee has contempt powers, it has been concluded that a referee does not have the power to find a respondent or witness in contempt. If appropriate, the referee should file a report with the Supreme Court detailing the facts of the contempt and request the Court to find the offending person in contempt and impose an appropriate sanction.

O. Admissibility of Prior Discipline

Disciplinary Proc. Against Eisenberg, 81 Wis. 2d 175, 259 N.W.2d 745 (1977).

Disciplinary Proc. Against Eisenberg, 117 Wis. 2d 332, 334 N.W.2d 169 (1984).

Prior discipline may be considered in imposing discipline. The prior discipline need not be the same type of misconduct. Evidence of prior attorney misconduct is material to the issue of appropriate discipline in a subsequent proceeding against the attorney. It is generally not material to the issue of whether the attorney committed the misconduct charged in the case before the referee.

P. Briefs

SCR 22.15(2)(f)

A referee may grant a request, or request sua sponte, that the parties file pre- or post-hearing briefs on one or more issues if they would assist the referee. The referee may set time limits for the filing of briefs and they may follow the filing of the hearing transcript. If post-hearing briefs are ordered, it is common practice to consider the receipt of the last brief as the start of the 30-day period for the referee's report to be filed.

Sample: An order for briefing following hearing is included in the Appendix.

Q. Interlocutory Appeals

The Supreme Court may grant a request for leave to appeal a non-final order.

5. Standard and Burden of Proof

SCR 22.38

A. Standard of Proof. Allegations of misconduct in a complaint, allegations of medical incapacity in a petition, and character and fitness to practice law shall be established by evidence that is clear, satisfactory, and convincing.

SCR 22.39

B. Burden of Proof. The burden in a disciplinary case or a medical incapacity proceeding is on OLR. In a proceeding seeking license reinstatement, readmission to the practice of law, removal of a medical incapacity, removal of conditions imposed on the practice of law, or discipline different from that imposed in another jurisdiction, the burden is on the respondent or petitioning attorney.

6. Preparing the Report

SCR 22.16(6)
SCR 22.32(1)

A. Time. For most proceedings, a referee must file a report within 30 days of the conclusion of the hearing or the filing of the transcript, whichever is later. If post-hearing briefs are ordered, it is common practice to consider the receipt of the last brief as the start of the 30-day period for the referee's report.

B. Content. The report must state: findings of fact, conclusions of law that cover each count alleged in the complaint, and a recommendation for disposition of the proceeding.

SCR 21.16

1) In a disciplinary case, the recommended disposition may be dismissal or the imposition of one or more of the types of discipline in SCR 21.16.

SCR 21.17

2) In a medical incapacity case, the recommendation for disposition should be dismissal, indefinite suspension, or imposition of conditions on practice.

SCR 22.29
SCR 22.31
SCR 22.36(6)

3) In a reinstatement case, the report should contain findings regarding the standards for reinstatement in SCR 22.31(1)(a) through (d) and SCR 22.29(4) and (4m), or SCR 22.36(6); and a recommendation for disposition of the petition (denial, grant, or grant with conditions).

C. Resources. Two useful references for analyzing issues, recommending a disposition, and writing the report are the ABA Standards for Imposing Lawyer Sanctions [see section 7.F. below] and the Compendium of Disciplinary Cases [http://compendium.olr.wicourts.gov/app/search].

7. Referee's Recommendations

SCR 21.16

A. Disciplinary Options. There is no "standard sanction" for a particular misconduct; however, sanctions imposed in other cases are instructive in fashioning an appropriate recommendation. The options specifically listed in the rule are as follows:

1) revocation;

2) suspension;

(Note: There is an important distinction between suspensions shorter or longer than six months. See SCR 22.28(2) and (3). An attorney suspended for less than six months need only file affidavits with the director showing compliance with the conditions of the order of suspension in order to be reinstated. An attorney suspended for six months or longer must file a petition for reinstatement under SCR 22.29 and a hearing must be convened under SCR 22.31, requiring the appointment of a referee. As a practical matter, this will extend the period of actual suspension by 12 to 18 months on average.)

3) public or private reprimand;

4) conditions on continued practice of law;

5) monetary payment;

6) restitution; and

7) conditions on seeking reinstatement.

Disciplinary Proc. Against Mulligan, 2015 WI 96, ¶39, 365 Wis. 2d 43, 870 N.W.2d 233

B. Factors Which Must Be Evaluated

1) The seriousness, nature, and extent of the misconduct;

2) The level of discipline needed to protect the public;

3) The need to impress upon the attorney the seriousness of the misconduct; and

4) The need to deter other attorneys from committing similar misconduct.

Disciplinary Proc. Against Sommers, 2012 WI 33, ¶80, 339 Wis. 2d 580, 811 N.W.2d 387

Disciplinary Proc. Against Winkel, 2015 WI 68, ¶40, 363 Wis. 2d 786, 866 N.W.2d 642

Disciplinary Proc. Against Carroll, 2013 WI 101, ¶42, 347 Wis. 2d 290, 830 N.W.2d 104

C. Sources of Guidance for Determining Appropriate Sanction Recommendations

1) Prior case law, especially prior disciplinary cases, which can be found in the Compendium of Disciplinary Cases [http://compendium.olr.wicourts.gov/app/search].

2) Aggravating and mitigating factors. See ABA Standards for Imposing Lawyer Sanctions (see section 7.F. below)

Disciplinary Proc. Against Nussberger, 2006 WI 111, ¶27, 296 Wis. 2d 47, 719 N.W.2d 501

Disciplinary Proc. Against Brandt, 2012 WI 8, ¶21, 338 Wis. 2d 524, 808 N.W.2d 687

D. The Supreme Court Follows a Policy of Progressive Discipline

E. Noteworthy Categories of Misconduct

Disciplinary Proc. Against Bult, 142 Wis. 2d 885, 419 N.W.2d 246 (1988)

1) Misappropriation and/or conversion of client funds. One of the most serious acts of lawyer misconduct; violates trust which is the fundamental principle of the lawyer-client relationship; places lawyer's pecuniary interest above client's interest; most frequently deserving of license revocation.

Disciplinary Proc. Against Hammis, 2011 WI 3, ¶43-44, 331 Wis. 2d 19, 793 N.W.2d 884

2) Dishonesty and misrepresentation. Regarded very seriously; system relies on honesty of its participants.

Disciplinary Proc. Against Winkel, 2015 WI 68, ¶40 (But *cf.* dissent), 363 Wis. 2d 786, 866 N.W.2d 642

3) Submission of false evidence, false statements or other deceptive practices during disciplinary hearing.

While misrepresentations to clients and to OLR are very serious, misrepresentation to the referee at the hearing is a separate "aggravating factor" under ABA Standards for Imposing Lawyer Sanctions.

F. Wisconsin Supreme Court Recognizes Aggravating and Mitigating Factors Set Forth in ABA Standards for Imposing Lawyer Sanctions

1) Standard 9.1. After misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanction to impose.

2) Standard 9.22. Aggravating factors:

a) prior disciplinary offenses;

b) dishonesty or selfish motive;

c) a pattern of misconduct;

d) mulitiple offenses;

e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of disciplinary agency;

f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;

g) refusal to acknowledge wrongful nature of conduct;

h) vulnerability of victim;

i) substantial experience in the practice of law;

j) indifference to making restitution; and

k) illegal conduct, including that involving the use of controlled substances.

3) Standard 9.32. Mitigating factors:

a) absence of a prior disciplinary record;

b) absence of a dishonest or selfish motive;

c) personal or emotional problems;

d) timely good faith effort to make restitution or to rectify consequences of misconduct;

e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;

f) inexperience in the practice of law;

g) character or reputation;

h) physical disability;

i) mental disability or chemical dependency including alcoholism or drug abuse when:

1. there is medical evidence that the respondent is affected by a chemical or mental disability;

2. the chemical dependency or mental disability caused the misconduct;

3. the respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and

4. the recovery arrested the misconduct and recurrence of that misconduct is unlikely.

j) delay in disciplinary proceedings;

k) imposition of other penalties or sanctions;

l) remorse; and

m) remotenesss of prior offenses.

4) Standard 9.4. Factors that should not be considered as either aggravating or mitigating:

a) forced or compelled restitution;

b) agreeing to the client's demand for certain improper behavior or result;

c) withdrawal of complaint against lawyer;

d) resignation prior to completion of disciplinary proceedings;

e) grievant's recommendation as to sanction; and

f) failure of injured client to complain.

Samples: A referee's report recommending a public reprimand and a report recommending a suspension are included in the Appendix.

Disciplinary Proc. Against Linehan, 2015 WI 82, ¶25, 362 Wis. 2d 296, 867 N.W.2d 806

G. Conditions

It is sometimes appropriate for a referee to recommend the Supreme Court impose conditions upon an attorney's license or reinstatement that require monitoring or oversight by the State Bar of Wisconsin's Wisconsin Lawyers Assistance Program (WisLAP). Such conditions must be carefully and specifically crafted. WisLAP has its own requirements for attorneys who submit to monitoring, whether voluntarily or as a result of a court order. These requirements can be expensive and time-consuming. Before recommending an attorney to submit to WisLAP monitoring, the referee is advised to obtain a copy of WisLAP's standard monitoring agreement and share it with the parties. The referee should explicitly state whether he or she is recommending monitoring subject to the terms of WisLAP.

SCR 21.16(2m)

H. Restitution

1) An attorney may be ordered to pay monetary restitution to a person whose money or property was misappropriated or misapplied.

2) An attorney may be ordered to reimburse the Wisconsin Lawyers' Fund for Client Protection (Fund) for awards made to a person whose money or property was misappropriated or misapplied. (Note: Restitution should not be ordered to the Fund merely because it made payment(s) to respondent's client(s). OLR must still show that respondent misappropriated or misapplied client's money.)

Disciplinary Proc. Against Smead, 2010 WI 4, ¶50, 322 Wis. 2d 100, 777 N.W.2d 644

3) Restitution is appropriate when:

a) the amount is readily ascertainable;

b) the funds at issue are or were in the attorney's control;

c) neither the grievant's nor the respondent's rights in a collateral matter will be affected; and

d) the funds are not incidental or consequential damages.

Disciplinary Proc. Against Woodard, 2012 WI 41, ¶¶29, 42, 340 Wis. 2d 248, 812 N.W.2d 511

4) The Supreme Court's standard policy is to require restitution to be paid to individuals harmed before costs are paid to OLR.

SCR 22.29(4m)

5) An attorney petitioning for reinstatement must show by clear and convincing evidence that the attorney has made restitution to or settled the claims of all persons who were injured or harmed by the attorney's misconduct, or provide an explanation for the failure to do so. This is so regardless of whether or not restitution was explicitly imposed in a disciplinary order.

SCR 22.24

I. Costs

1) All or a portion of the costs of the proceeding may be assessed against the respondent in misconduct, medical incapacity, or reinstatement proceedings.

2) Procedure:

a) OLR shall file a statement of costs and recommendation regarding payment of costs within 20 days of the filing of the referee's report or stipulation, with a copy to the referee and respondent.

b) The respondent has 21 days to file an objection. The objection must explain with specificity the reasons and state a reasonable amount of costs or no costs. The objection may contain relevant documentation. If an objection is filed, OLR may reply within 11 days.

SCR 22.16(7)

c) Within 10 days after the parties' cost submissions, the referee shall make a recommendation without further discovery or hearing. This should be a separate document filed with the Clerk of the Supreme Court.

SCR 22.24(1m)

3) The Supreme Court's general policy when misconduct is found is to assess all costs against the respondent.

Disciplinary Proc. Against Eichhorn-Hicks, 2014 WI 26, ¶21, 353 Wis. 2d 590, 846 N.W.2d 806

4) The Supreme Court may exercise its discretion to reduce costs. When considering whether to reduce costs, the Court may look to whether extraordinary circumstances are present, and it will examine the statement of costs filed by OLR, any objection and reply, the recommendation of the referee, and any or all of the following factors:

a) the number of counts charged, contested, and proven;

b) the nature of the misconduct;

c) the level of discipline sought by the parties and recommended by the referee;

d) the respondent's cooperation with the disciplinary process;

e) prior discipline, if any; or

f) other relevant circumstances.

SCR 22.16(7)

Samples: Three recommendations on costs are included in the Appendix.

8. Special Types of Cases

A. Medical Incapacity

SCR 22.001(8)

1) Definition. "Medical incapacity" means a physical, mental, emotional, social or behavioral condition that is recognized by experts in medicine or psychology as a principal factor which substantially prevents a person from performing the duties of an attorney to acceptable professional standards.

2) The issue of medical incapacity may arise before a referee in one of three contexts (SCR 22.35 (Medical incapacity determined by court) typically does not result in a referee appointment):

SCR 22.16(4)(a)
SCR 22.16(4)(c)
SCR 22.16(4)(d)
SCR 22.34(11)(a)

Disciplinary Proc. Against Rader, 2004 WI 121, 275 Wis. 2d 283, 685 N.W.2d 524

Medical Incapacity Proc. Against Colleen R.T., 2014 WI 29, 353 Wis. 2d 639, 847 N.W. 172

a) Raised by respondent in the course of a disciplinary or medical incapacity proceeding. If the respondent claims to have a medical incapacity that makes defense of the proceeding impossible, the referee shall conduct a hearing on the issue and make findings. The referee may order an exam by a physician or psychologist. If no medical incapacity that makes defense of the proceeding impossible is found, the referee shall proceed with the misconduct or medical incapacity hearing. If a medical incapacity that makes defense of the proceeding impossible is found, the referee shall file a report with the Supreme Court. If the Court agrees, the Court shall halt the misconduct proceeding and suspend the respondent's license until respondent is reinstated under SCR 22.36, at which point the misconduct hearing shall resume.

SCR 22.34
SCR 22.34(9)
SCR 22.34(13)
SCR 22.38
SCR 22.39
SCR 21.17

b) Raised by OLR in a medical incapacity proceeding. Under this rule, most of the same procedures governing a disciplinary proceeding apply, and OLR has the burden of demonstrating by clear, satisfactory, and convincing evidence that the respondent has a medical incapacity. The referee may appoint counsel to represent the respondent and may order an exam by a physician or psychologist. If a medical incapacity is found, the law license may be suspended indefinitely or conditions may be placed on attorney's practice.

SCR 22.36

Medical Incap. Proc. Against Downing, 2015 WI 93, 365 Wis. 2d 1, 671 N.W.2d 8

c) Raised when an attorney whose license was suspended or on whom conditions were imposed for medical incapacity petitions for reinstatement or removal of the conditions. In such cases, the petitioner has the burden to prove the medical incapacity has been removed and that the petitioner is fit to resume the practice of law, with or without conditions.

SCR 22.16(4)(b)

3) Confidentiality. When a respondent claims a medical incapacity renders defense of the proceeding impossible, the proceedings on the motion are confidential, and it would be appropriate to close the hearing. In a medical incapacity proceeding commenced by OLR, the proceedings are confidential until the Supreme Court issues a final order.

Sample: A referee's report in a medical incapacity case is included in the appendix.

SCR 22.12
SCR 22.34(10)

Disciplinary Proc. Against Kelsay, 2003 WI 141, ¶14, 267 Wis. 2d 17, 671 N.W.2d 8

Disciplinary Proc. Against Steiner, 225 Wis. 2d 422, 591 N.W.2d 857 (1999)

B. Stipulated Cases

The Supreme Court may consider a stipulated resolution without appointing a referee. However, if the Court rejects the stipulation, a referee is appointed to hold a hearing and the rejected stipulation has no evidentiary value.

Sometimes a referee is appointed at approximately the same time the parties file a dispositive stipulation. In such instances, the referee should advise the Supreme Court and the parties, in writing, that the referee will not participate in the matter pending the Court's review and consideration of the stipulation. Sometimes a dispositive stipulation is filed after the referee is appointed but before the referee has had substantive involvement in a proceeding. In such instances, the referee may file a brief report and recommendation regarding the stipulation.

SCR 22.19

C. Revocation by Consent (Consensual License Revocation)

SCR 22.19(3)

1) A petition for revocation by consent may be filed by the respondent before the filing of a formal complaint by OLR, in which case it goes directly to the Supreme Court without the appointment of a referee.

SCR 22.19(4)

Disciplinary Proc. Against Laux, 2015 WI 59, 362 Wis. 2d 723, 866 N.W.2d 628

2) If the petition for revocation by consent is filed after the filing of a formal complaint, OLR files a response within 20 days, and the referee must file a report within 30 days after receipt of OLR's response.

Samples: Two referee reports for consensual license revocation are included in the Appendix.

SCR 22.34(11)

D. Request for Indefinite Suspension in Medical Incapacity Cases

1) An attorney subject to an investigation for medical incapacity may request indefinite suspension. If the request is filed before OLR files a petition, the request is filed with the Supreme Court to be handled without the appointment of a referee.

2) If the attorney's request for indefinite suspension is filed after the filing of a petition, OLR shall file a response within 20 days, and the referee must file a report within 30 days after receipt of OLR's response.

SCR 22.21

E. Temporary Suspension

SCR 22.21(1)

1) The Supreme Court, on its own motion or upon the motion of OLR, may temporarily suspend an attorney's license to practice law where it appears that the attorney's continued practice of law during the pendency of a disciplinary proceeding poses a threat to the interest of the public and the administration of justice.

SCR 22.21(2)

2) Before entering an order temporarily suspending an attorney's license, the Supreme Court shall issue an order directing the attorney to show cause as to why his or her license should not be temporarily suspended.

Disciplinary Proc. Against Raymonds, 2000 WI 116, ¶¶11, 20, 238 Wis. 2d 846, 618 N.W.2d 521

3) The Supreme Court may temporarily suspend an attorney's license while a disciplinary proceeding is pending before a referee.

SCR 22.21(3) & (4)

4) When the Supreme Court suspends a lawyer under this rule, OLR must file a complaint within four months of the effective date of the suspension. The referee must file a report and recommendation within six months after the filing of the complaint.

5) Reinstatement from the temporary suspension does not terminate the disciplinary proceeding.

SCR 22.03(4)

A temporary suspension for failure to cooperate in an OLR investigation pursuant to SCR 22.03(4) is different than a SCR 22.21 temporary suspension. OLR files SCR 22.03(4) motions directly with the Supreme Court. They are not referred to referees.

SCR 22.20

F. Summary Suspension on Criminal Conviction

SCR 22.20(1)
SCR 22.20(5)

1) Upon receiving satisfactory proof that an attorney has been found guilty or convicted of a serious crime (defined in SCR 22.20(2)), the Supreme Court may summarily suspend the attorney, pending final disposition of a disciplinary proceeding. A certified copy of the record of the criminal proceeding or the certificate of conviction is conclusive evidence of the attorney's guilt of the crime.

SCR 22.20(6)

2) When the Supreme Court summarily suspends a lawyer's license under this rule, OLR must file a disciplinary complaint within two months of the suspension, or show cause why the suspension should continue.

SCR 22.20(7)

3) The referee appointed to handle a disciplinary hearing following a summary suspension has shorter deadlines: the hearing is to be conducted "promptly" and the report is to be filed within three months of the filing of the complaint.

SCR 22.20(3)
SCR 22.20(6)
SCR 22.20(7)

4) In the event the conviction is overturned, the lawyer's license will be reinstated; however, reinstatement does not terminate an investigation or disciplinary proceeding.

5) Discipline in such cases may be imposed retroactive to the date of the summary license suspension.

SCR 22.28-SCR 22.33

G. Petition for Reinstatement

SCR 22.28(2)

1) An attorney suspended for less than six months need only file affidavits with the director showing full compliance with all the conditions of the order of suspension in order to be reinstated. Reinstatement will automatically occur upon OLR's notification to the Supreme Court of the attorney's full compliance.

SCR 22.28(3)

2) In the case of an attorney suspended for six months or longer, the attorney must file a petition for reinstatement under SCR 22.29; a hearing must be convened under SCR 22.31, requiring the appointment of a referee; and the Supreme Court decides whether to grant the petition for reinstatement. As a practical matter, this will extend the period of actual suspension by 12 to 18 months on average.

SCR 22.30(3)

a) At least 30 days prior to the reinstatement hearing, public notice must be published in a newspaper of general circulation in any county where the petitioner maintained an office prior to suspension or revocation, in the county of the petitioner's residence during the suspension or revocation, and in an official publication of the State Bar. OLR is responsible for transmitting the notices to the newspaper(s) and the State Bar, but the referee should ensure that the hearing is scheduled so as to permit timely transmisson and publication of the reinstatement notices in the appropriate State Bar publication.

SCR 22.31(1)

b) The standard of proof for all of the items in SCR 22.31 is clear, satisfactory, and convincing evidence. The burden is on the petitioner.

SCR 22.31(2)
SCR 22.31(3)
SCR 22.31(5)

c) The hearing is public, it is transcribed, and it is conducted pursuant to the rules of civil procedure. The rules of evidence do not apply, and the referee may consider any relevant information presented.

Sample: A referee's report – reinstatement is included in the Appendix.

SCR 22.36

H. Reinstatement from Medical Incapacity

SCR 22.36(1)

1) An attorney suspended or subject to conditions for medical incapacity may petition for reinstatement or removal of conditions at any time.

SCR 22.36(3)

2) Filing the petition waives petitioner's privilege and the petitioner must provide consent to obtain health care information.

SCR 22.36(4)

3) OLR may direct a medical or psychological examination of the petitioner.

SCR 22.36(6)

Medical Incapacity Proc. Against Schlieve, 2010 WI 22, 323 Wis. 2d 654, 780 N.W.2d 516

4) At the hearing, the petitioner has the burden to prove by clear, satisfactory, and convincing evidence that the medical incapacity is removed, and that the petitioner is fit to resume the practice of law.

I. Consensual Public and Private Reprimands

SCR 22.09

1) OLR may reach an agreement with an attorney for the imposition of a public or private reprimand. Such an agreement must be submitted to a referee for review.

SCR 22.09(2)

2) OLR provides a copy of the agreement to the grievant, who may submit a response. The respondent attorney and OLR may comment on the grievant's response. OLR provides the referee the agreement, the respondent's disciplinary history, any grievant's response, and any comments from the respondent and director. No other submissions are provided.

SCR 22.09(3)
SCR 22.09(4)

3) The referee reviews the agreement to determine whether it is supported by sufficient facts and whether the sanction falls within the range of sanctions appropriate in similar cases. If not approved, the referee informs OLR and the attorney and provides the reasons for disapproval. If the referee requests additional information, OLR may supply it for the referee to consider.

SCR 22.09(3)

4) If the referee approves the agreement, the referee shall issue the reprimand in writing to the respondent and send a copy to the director.

SCR 22.22

J. Reciprocal Discipline

Disciplinary Proc. Against Gehl, 214 Wis. 2d 672, 571 N.W.2d 673 (1997)

1) If an attorney licensed in Wisconsin receives public discipline, or is suspended for medical capacity in another jurisdiction, OLR may file a complaint and typically the Supreme Court will impose discipline in Wisconsin identical to that imposed in the other jurisdiction, unless certain conditions are present.

2) Not all reciprocal discipline cases require appointment of a referee. Sometimes a referee is appointed at approximately the same time as OLR files a motion seeking imposition of reciprocal discipline. In such instances, the referee should advise the Supreme Court and the parties, in writing, that the referee will not participate in the matter pending the Court's review and consideration of the motion.

Disciplinary Proc. Against Cyrak, 197 Wis. 2d 401, 541 N.W.2d 147 (1994)

3) The Supreme Court may refer the complaint to a referee for a hearing to determine whether reciprocal discipline is warranted and the referee may conduct a hearing. Considerations that may warrant imposing different discipline include:

a) the procedure in the other jurisdiction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process, or

b) there was such an infirmity of proof establishing misconduct or medical incapacity that the Supreme Court could not accept as final the conclusion in respect to the misconduct or medical incapacity, or

c) the misconduct justifies substantially different discipline in Wisconsin.

4) At such a hearing, the burden is on the party seeking a different outcome to demonstrate that the imposition of identical discipline or suspension is unwarranted.

5) If the discipline or suspension has been stayed in the other jurisdiction, any reciprocal discipline shall be held in abeyance until the stay expires.

K. Enforcement Motions

Disciplinary Proc. Against Lister, 2012 WI 102, 343 Wis. 2d 532, 817 N.W.2d 867

Disciplinary Proc. Against LeSieur, 2013 WI 39, 347 Wis. 2d 190, 832 N.W.2d 67

OLR may seek enforcement of a disciplinary order of the Supreme Court by filing a motion with the Court for an order to show cause why the attorney should not be held in contempt or why sanctions should not be imposed for failure to comply with the previous order. This may result in a referee being appointed to handle the motion.

Disciplinary Proc. Against Semancik, 2015 WI 31, 361 Wis. 2d 441, 862 N.W.2d 579

Disciplinary Proc. Against Din, 2015 WI 4, ¶7, 360 Wis. 2d 274, 858 N.W.2d 654

Disciplinary Proc. Against Ritter, 2013 WI 3, ¶25, 345 Wis. 2d 108, 824 N.W.2d 450

9. Amended and Supplemental Reports

If the referee determines, after the referee's report has been filed with the Supreme Court, that the report requires supplementation or correction, perhaps because the referee is advised of additional relevant facts or discovers misstatements or omissions in the report, the referee may proceed as follows: In the event of a minor and non-controversial error, the referee may send an errata sheet or a letter to the Court and the parties. Any substantive change may require the referee to prepare and file an amended or supplemental report.

10. Review of the Referee's Report

SCR 22.17

A. Appeal and Time for Appeal

1) The time for filing an appeal of the referee's report with the Supreme Court is within 20 days of the date on which the report is filed with the Court.

2) The appeal is conducted pursuant to the rules governing civil appeals in the Supreme Court. The appeal is placed on the Court's first available assignment of cases following completion of briefing.

B. Review by the Supreme Court

Wisconsin Supreme Court Internal Operating Procedures, II.B.5

SCR 22.17(2)

1) When the 20-day time for filing an appeal of the referee's report provided in SCR 22.17 has passed and neither the respondent attorney nor OLR has filed an appeal, the matter is submitted to the Supreme Court for determination. The matter is assigned to a court commissioner for analysis and reporting.

2) The Supreme Court may, on its own motion, order the parties to file briefs in the matter. The 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.

Disciplinary Proc. Against Inglimo, 2007 WI 126, ¶5, 305 Wis. 2d 71, 740 N.W.2d 125

3) In reviewing the referee's findings of fact, the Supreme Court applies the "clearly erroneous" standard. The Court will not make a factual finding the referee could have made but did not.

Disciplinary Proc. Against Alia, 2006 WI 12, ¶39, 288 Wis. 2d 299, 709 N.W.2d 399

4) The Supreme Court reviews the referee's conclusions of law de novo.

Disciplinary Proc. Against Wood, 122 Wis. 2d 610, 363 N.W.2d 220 (1985)

SCR 21.16
SCR 22.24

Disciplinary Proc. Against Winter, 171 Wis. 2d 76, 490 N.W.2d 523 (1992)

5) The Supreme Court determines the appropriate discipline to impose for an attorney's professional misconduct, accepting or modifying the disciplinary recommendation of the referee. The Court will determine the costs and any conditions to be imposed.

C. Remand

Disciplinary Proc. Against Brunner, 195 Wis. 2d 89, 535 N.W.2d 438 (1995)

Disciplinary Proc. Against Grapsas, 225 Wis. 2d 411, 591 N.W.2d 862 (1999)

On occasion, the Supreme Court finds it necessary to remand a disciplinary proceeding to the referee when the record is insufficient to review the matter or other circumstances require.

D. Motion for Reconsideration

SCR Ch. 22 does not specify that reconsideration motions may be filed with the referee concerning the referee's report, but such motions are allowed under the rules of civil procedure. Under appropriate circumstances before the Supreme Court has begun its consideration, the referee could consider such a motion.

STATE OF WISCONSIN, CIRCUIT COURT, ______________________ COUNTY

For Official Use

Caption:

Exhibit List

☐ Continuation

Case No. __________

Type of Hearing ______________________ Date of Hearing ______________________

Exhibit Information							Exhibit Management			
Number	Description	Offered By	Received	Withdrawn	Denied	Original Substitued	Biological Material	Storage Location	Return Date / To Whom	Date Destroyed

☐ Continued on next page.

This form shall not be modified. It may be supplemented with additional material.

Exhibits Marked in ____________________

Ex. No.	Description of Exhibit	Witness Identifying	Marked by (C/R)	Date Ex. Marked	Not Offered	With-drawn	Not Admitted	Admitted	Over Objection

Exhibits Marked in ____________________

Ex. No.	Description of Exhibit	Witness Identifying	Marked by (C/R)	Date Ex. Marked	Not Offered	With-drawn	Not Admitted	Admitted	Over Objection

Witnesses in ____________________

_____ Name: ______________________________ called by (C/R): _____ Date: __________ Time: ______
Legal Elements Addressed:

Key Phrases of Testimony:

Problems/Weaknesses in Testimony:

Questions to ask:

_____ Name: ______________________________ called by (C/R): _____ Date: __________ Time: ______
Legal Elements Addressed:

Key Phrases of Testimony:

Problems/Weaknesses in Testimony:

Questions to ask:

_____ Name: ______________________________ called by (C/R): _____ Date: __________ Time: ______
Legal Elements Addressed:

Key Phrases of Testimony:

Problems/Weaknesses in Testimony:

Questions to ask:

_____ Name: ______________________________ called by (C/R): _____ Date: __________ Time: ______
Legal Elements Addressed:

Key Phrases of Testimony:

Problems/Weaknesses in Testimony:

Questions to ask:

Witnesses in ____________________

_____ Name: ________________________________ called by (C/R): _____ Date: __________ Time: ______
Legal Elements Addressed:

Key Phrases of Testimony:

Problems/Weaknesses in Testimony:

Questions to ask:

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Legal Elements Addressed:

Key Phrases of Testimony:

Problems/Weaknesses in Testimony:

Questions to ask:

_____ Name: ________________________________ called by (C/R): _____ Date: __________ Time: ______
Legal Elements Addressed:

Key Phrases of Testimony:

Problems/Weaknesses in Testimony:

Questions to ask:

_____ Name: ________________________________ called by (C/R): _____ Date: __________ Time: ______
Legal Elements Addressed:

Key Phrases of Testimony:

Problems/Weaknesses in Testimony:

Questions to ask:

STATE OF WISCONSIN IN SUPREME COURT

In the Matter of Disciplinary Proceedings
Against [redacted], Attorney at Law

Case No. **15AP[redacted]-D**

Pursuant to SCR 22.13 (3),

IT IS ORDERED that James G. Curtis, Jr. is appointed referee in the above entitled matter.

IT IS FURTHER ORDERED that the originals of all papers and pleadings in the above matter shall be filed with the Clerk of the Supreme Court, and copies shall be served on the referee pursuant to SCR 22.13(5). If the referee nonetheless receives the original of any paper or pleading from a party, the referee shall immediately return the original paper or pleading to the party for filing with the Clerk of the Supreme Court or shall forward the original paper or pleading to the Clerk of the Supreme Court for filing, and shall keep a copy for himself/herself. The referee shall also immediately file with the Clerk of the Supreme Court the original of any order or paper generated by the referee. The referee shall not retain originals of any paper or pleading for any purpose. For purposes of this order and SCR 22.13(5), the terms "paper[s]" and "pleading[s]" shall be construed broadly and shall include, without limitation, amended complaints, answers (initial or amended), motions, responses, briefs, memoranda, correspondence, exhibits, transcripts, and similar documents. The terms "paper[s]" and "pleading[s]" shall not include correspondence or discovery materials exchanged between the parties, a courtesy copy of which is sent to the referee (unless the correspondence or discovery material is filed in connection with a motion or marked as an exhibit at a hearing).

IT IS FURTHER ORDERED that the referee shall ensure that a complete and organized record of the hearing in this matter is created and filed with the Clerk of the Supreme Court. The hearing record shall contain all original hearing transcripts, all original exhibits marked or identified at the hearing, whether or not received into evidence, and a completed Exhibit List on Forms GF-102 and GF-103 (blank copies attached) showing which exhibits were offered, received, withdrawn, or denied. (The stipulation and order for return of exhibits on Form GF-102 shall not be used). The hearing-related record shall be filed with the Clerk of the Supreme Court prior to or simultaneously with the filing of the referee's report and recommendation in this matter.

IT IS FURTHER ORDERED that the referee's working file, except for any notes that the referee might have created in the course of the disciplinary proceeding, shall be filed prior to or simultaneously with the filing of the referee's report and recommendation in this matter. The referee's working file shall not be made a part of the

public case record in this disciplinary proceeding and shall not be made available for review by the parties or the public, except when specifically ordered by the Supreme Court. The referee's working file shall be maintained by the Clerk of the Supreme Court.

Dated at Madison, Wisconsin, this 13 day of October, 2015.

Patience D. Roggensack
Chief Justice

cc: Office of Lawyer Regulation
[RESPONDENT]
[OLR COUNSEL]
James G. Curtis, Jr.

LAW OFFICES OF
JAMES J. WINIARSKI
ATTORNEY AT LAW

3625 W. Oklahoma Ave
Milwaukee, WI 53215

Telephone: 414-383-3902
Fax: 414-383-2384

Legal Assistants:
Theresa M. Cavender
Crystal L. Barry
Aimee C. Sivula
Rebecca L. Beaumont

December 29, 20

[redacted], Esq.
Office of Lawyer Regulation
110 East Main Street, Suite 315
Madison, WI 53703-3383

[redacted], Esq.
[redacted]
[redacted], WI 53220

Re: In the Matter of the Disciplinary Proceedings Against [redacted], Attorney at Law
Case No.: 2014AP[redacted]-D

Dear Ms. [redacted] and Mr. [redacted]:

As you have been previously advised, I have been appointed referee in the above-mentioned matter.

Pursuant to Supreme Court Rule 22.15, I would like to hold a telephonic scheduling conference in this matter. The telephonic scheduling conference will be held on Thursday, January 29, 2015, at 11:00 a.m. I would ask that Attorney [redacted] take responsibility for initiating the three-way conference call.

The parties should be prepared to discuss the following during the scheduling conference:

1. Any issues not set forth in the complaint.
2. The necessity of amending any pleadings.
3. Any issues relating to depositions and discovery.
4. The possibility of any stipulations.
5. The number of witnesses each party intends to call at the time of hearing.
6. The expected length of the hearing.
7. Anticipated pre-trial motions.
8. Your position on trial briefs.
9. Any other pre-trial matters which need to be addressed.

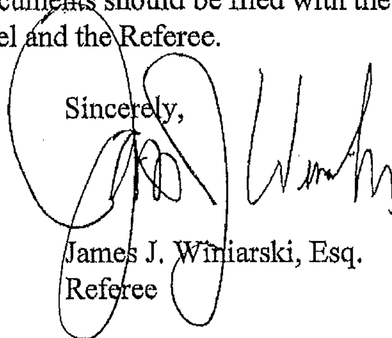
I currently intend to hold the hearing in Milwaukee County at a location to be designated later.

[redacted], Esq.
[redacted], Esq.
December 29, 2014
Page 2

If you believe it would be helpful, you are both encouraged to discuss all of the above-mentioned matters between yourselves prior to the scheduling conference.

I remind each of you that all original documents should be filed with the Clerk of Supreme Court, with a copy provided to opposing counsel and the Referee.

Sincerely,



James J. Winiarski, Esq.
Referee

JJW:tmc
cc: Diane M. Fremgen
Clerk of Supreme Court

STATE OF WISCONSIN IN SUPREME COURT

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST [redacted], ATTORNEY AT LAW.

CASE CODE 30912

OFFICE OF LAWYER REGULATION,

CASE NO. 14AP[redacted]-D

Complainant;

[redacted],

Respondent.

SCHEDULING ORDER

A telephone scheduling conference in this proceeding was held on September 17, 2014. Participants were [redacted], Retained Counsel for Complainant OLR, Respondent [redacted] and Honorable James R. Erickson, Referee.

After conferring with the participants,

IT IS ORDERED:

1. **Simplification of Issues**. Complainant's counsel and Respondent shall confer and:

   a. Identify the issues, and

   b. Determine if the issues can be simplified, and

   c. Determine if they can stipulate to any facts and if so attempt to stipulate to all facts not in dispute, and

   d. Determine if they can agree to the identity or authenticity of documents, and

   e. Consider any other matters which may aid in the disposition of this proceeding.

By October 31, 2014, Complainant's counsel will send a proposed stipulation of facts to Respondent and Respondent will respond to such stipulation of facts with a written response within ten (10) days and the parties will go from there.

2. **Disclosure of Witnesses:**

Complainant, by October 17, 2014; Respondent by October 31, 2014;

Complainant shall file with the Clerk of the Supreme Court, with a copy to the other side and to the Referee, a written disclosure of the name, address and subject of the anticipated evidence from each witness, expert and non-expert, Complainant intends to call by the date specified above.

Respondent shall file with the Clerk of the Supreme Court, with a copy to the other side and to the Referee, a written disclosure of the name, address and subject of the anticipated evidence from each witness, expert and non-expert, Respondent intends to call by the date specified above.

If Complainant does not designate an expert witness and Respondent thereafter designates an expert witness, Complainant shall have thirty (30) days from the date the Respondent has designated an expert witness to designate its own expert witness.

3. **Deadline for Filing Dispositive Motions.**

The deadline for filing dispositive motions is October 31, 2014.

Both parties have expressed a desire to file a motion for summary judgment. Dispositive motions may be filed and served by either party on any date up to the deadline set above. Dispositive motions must be accompanied by a supporting brief. The original of such a motion shall be filed with the Clerk of the Supreme Court, with a copy to the other side and Referee. Responses to any dispositive motion must be filed and served within twenty-one (21) calendar days of the date of service of motion. Any reply by the movant must be filed and served within ten (10) calendar days of service of the response.

4. **Deadline for Filing Discovery.**

Discovery deadline is February 3, 2015.

Discovery has commenced and may continue. Discovery may include, but is not limited, to oral depositions. All discovery in this case must be completed no later than the date set forth above, absent written agreement between the parties to some other date.

5. **Disclosure Deadline.**

Disclosure deadline is February 9, 2015. Each party shall file with the Clerk of the Supreme Court, with a copy to the other side and the Referee, by the above deadline:

a. Any motion in limine.

b. Any trial brief the party desires to file prior to trial.

c. An exhibit list listing all exhibits that party intends to use at the hearing.

d. A copy of all exhibits that party intends to use at the hearing.

Exhibits sent out by the Complainant shall be numbered beginning with number 1 and be sequentially numbered.

Exhibits sent out by the Respondent shall be numbered beginning with the number 200 and be sequentially numbered.

6. **Final Pretrial Conference.**

A final pretrial conference will be held on February 16, 2015 at 8:30 a.m.

A telephone pretrial conference shall be held at the above time and date, with such telephone conference call to be initiated by Complainant's Counsel.

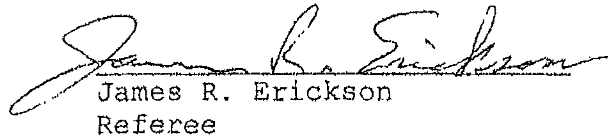
7. **Trial.**

The trial of this matter will be held on February 26, 2015 at 9:00 a.m. in Eau Claire, Wisconsin. Complainant and Respondent will agree on a mutually acceptable location for the trial or hearing.

(Respondent has the right to have the hearing held in the County of Respondent's principal office.)

Complainant's counsel will arrange for the presence of a court reporter to record the proceedings at the hearing.

Dated this 25th day of September, 2014, nunc pro tunc the 17th day of September, 2014.



James R. Erickson
Referee

Scheduling Order after Scheduling Conference

STATE OF WISCONSIN | IN SUPREME COURT

In the Matter of Disciplinary
Proceedings Against:
[respondent name]
Attorney at Law, Respondent.

SCHEDULING ORDER

CASE NO. [case number]

WHEREAS, a telephonic scheduling conference was had in the above-captioned matter on [date], at [time], [referee], Referee, presiding, and the appearances being the respondent, Attorney [respondent name], in person, and the Office of Lawyer Regulation, by Attorney [OLR attorney name]; and

WHEREAS, the Referee discussed with the parties those issues set forth in Supreme Court Rule 22.15;

NOW, THEREFORE, it is hereby ordered as follows:

1. The Office shall provide in writing to the referee and respondent by [date] the following information:

a. A list of all witnesses intended to be called at the final hearing in this matter, including experts. Disclosure shall include the address and phone number for each proposed witness.

b. A summary of expected testimony for each witness named.

c. A list of documentary exhibits to be produced at the final hearing.

2. The respondent shall provide in writing to the referee and the Office by [date] the following information:

a. A list of all witnesses intended to be called at the final hearing in this matter, including experts. Disclosure shall include the address and phone number for each proposed witness.

b. A summary of expected testimony for each witness named.

C. A list of documentary exhibits to be produced at the final hearing.

3. The parties shall complete all discovery, including depositions, by [date] unless good cause for an extension is shown.

4. A final pretrial and hearing date for motions in limine is set for [date] at [time]. Any motions by the Office or the respondent shall be filed with the Court and served upon the other party and the

referee by [date]. The location and method of hearing conducted on [date] will be determined by the referee after the receipt of any motions filed.

5. The final hearing in this matter will to commence on [date] and will continue each day thereafter through [date], if necessary. The hearing will be held at [location] or such other suitable place as determined prior to hearing. The referee shall be responsible to reserve a room for said hearing. Further, the referee will make arrangements and appoint a person to act as a court reporter to make a verbatim record of the proceedings.

6. All of the aforesaid deadlines of this scheduling order must be adhered to by the parties unless a party is relieved from such deadline by approval of the referee. Failure to comply with a scheduled deadline may result in imposition of sanctions by the referee as provided by Wisconsin Rules of Civil Procedure Sections 802.10 (3) (d) and 805.03.

Dated this _____ day of _______________, _____

[signature]
Referee

Scheduling Notice after Non-performance by Respondent

STATE OF WISCONSIN	IN SUPREME COURT
In the Matter of Disciplinary Proceedings Against: [respondent name] Attorney at Law, Respondent.	**SCHEDULING ORDER** CASE NO. [case number]

A telephonic scheduling conference having been held in the above proceeding on [date] with the Office of Lawyer Regulation appearing by Attorney [name], and the respondent attorney not appearing, although [s]he was given timely notice of the hearing,

THE REFEREE MAKES THE FOLLOWING FINDINGS AND ISSUES THE FOLLOWING ORDER:

FINDINGS

1. A scheduling conference was held on [date], attended by telephone by both Attorney [OLR attorney name] and respondent Attorney [respondent name].

2. As a result of the scheduling conference, a Scheduling Order in writing was signed, with the original sent to the Supreme Court and copies to the parties.

3. Pursuant to the terms of the Scheduling Order:

a) Respondent was to file his answer to the Complaint no later than [date]; he failed to comply with the Scheduling Order;

b) Attorney [OLR attorney name] agreed to allow Attorney [respondent name] to mail a responsive pleading on [date], thus granting an extension of time; the respondent has failed to file a responsive pleading or serve a responsive pleading as of [date]; and,

c) Both parties were to file with the Referee a list designating prospective witnesses no later than [date]; the respondent has not filed or served a copy of his perspective witnesses on the Referee, Supreme Court or counsel for the Board.

4. The undersigned contacted Attorney [respondent name] by letter dated [date], indicating the non receipt of Attorney [respondent name]'s responsive pleadings and inquiring as to whether he intended to file responsive pleadings.

5. Attorney [respondent name] failed to respond in any way to that letter.

ORDER

1. Counsel for the Board made a verbal.motion for a default judgment at today's hearing; and,

a) Counsel for the Board will file a written motion for default judgment by [date]; and,

b) If Attorney [respondent name] has any objection to either the form or substance of the motion, then he will, no later than [time] on [date], contact the undersigned's office to schedule a hearing on the motion, as well as have in the Supreme Court, the undersigned and Attorney [OLR attorney name]'s hands, a sworn testamentary evidence and/or written legal argument in support of his objection to the default judgment; if he does not contact the undersigned's office and/or file the required documents, then the Office's motion for default judgment will be granted and an appropriate order issued.

2. In light of Attorney [respondent name]'s failure to supply witness names pursuant to the scheduling Order, he will be allowed to call no witnesses other than himself.

3. If the default judgment is entered, then the previously scheduled hearing date of [date] will be utilized on the issue of sanctions, at the time and place previously set.

Dated this _____ day of _______________, _____

[signature]
Referee

Referee's Report in Default Case

STATE OF WISCONSIN IN SUPREME COURT

In the Matter of Disciplinary Proceedings Against:
[respondent name]
Attorney at Law, Respondent.

REPORT AND RECOMMENDATION OF REFEREE
CASE NO. [case number]

This matter was commenced by the filing of a Complaint, an Order to Answer and Admission of Service in the Supreme Court of the State of Wisconsin on [date].

The undersigned was appointed as Referee by order of the Supreme Court on [date], pursuant to Supreme Court Rule 22.13(3). Attorney [Office attorney name] appears for the Office of Lawyer Regulation and Attorney [respondent name] appeared pro se.

A scheduling conference was held an [date] by telephone, with both Attorneys [Office attorney name] and [respondent name] appearing. Attorney [respondent name] was ordered to file his answer no later than [date], and was further ordered to provide a list of proposed witnesses no later than [date]; he failed to comply with the Order.

A second scheduling conference was noticed on [date] for [date] at [time] by telephone. The undersigned made attempts to contact Attorney [respondent name] and failed. Inasmuch as there was sufficient notice, the scheduling conference went ahead at [time] and a new Scheduling Order was issued, indicating that the Office was to file a written Motion for Default Judgment by [date] and, if Attorney [respondent name] had any objection to either the form or substance of the motion, he would no later than [time] on [date]: "contact the undersigned's office to schedule a hearing on the motion, as well as have in the Supreme Court, the undersigned and Attorney [Office attorney name]'s hands, sworn testamentary evidence and/or written legal argument in support of his objection to the default judgment." Knowing that if he failed to comply with the Order, the Office's motion would be granted and the appropriate order issued, he deliberately failed to comply with the order.

The same Scheduling Order indicated that if a Default Judgment was entered, the previously scheduled hearing date of [date] would be utilized on the issues of sanctions only.

The Office filed a Motion for Default Judgment and for Sanctions on or about [date], with an Affidavit in support of the motion. The Order for Default was signed on [date].

As of today's date, no motion to re-open the Default Judgment has been filed, although Attorney [respondent name] handed to both the undersigned and Attorney [Office attorney name] an "Answer" at the hearing.

FINDINGS OF FACT

The Office has proven by the requisite burden of proof the factual allegations of the Complaint as to all three numbered counts.

CONCLUSIONS OF LAW

As to Count I, the grievance of [name], Attorney [respondent name] has violated SCR [etc.]

As to Count II, [etc.]

RECOMMENDATION

The Office has recommended …

Attorney [respondent name] has requested …

[Discussion.]

It is the recommendation of the Referee that ….

Dated this _____ day of ________________, _____

[signature]
Referee

STATE OF WISCONSIN IN SUPREME COURT

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST [redacted]
[redacted], ATTORNEY AT LAW.

OFFICE OF LAWYER REGULATION, Case No. 2014 AP[redacted] – D

Complainant,

[redacted]

Respondent.

ORDER FOR DEFAULT

The Office of Lawyer Regulation having filed a Motion for Default Judgment and for sanctions on or about March 11, 2015, and an Amended Notice of Motion and Motion for Default Judgment and for sanctions on or about March 31, 2015. The undersigned having issued two separate notices to the respondent requesting his Answer to the Complaint and the undersigned's correspondence.

The respondent, Attorney [redacted], having not complied.

FINDINGS:

1. OLR properly served [redacted] with a Complaint and Order to Answer on February 10, 2015, pursuant to SCR 22:13(1).
2. [redacted] has defaulted by failing to timely answer the Complaint against him in the above entitled matter.
3. [redacted] failed to respond to correspondence dated March 26, 2015, and April 10, 2015 from the Referee.
4. [redacted] failed to participate in the Default hearing scheduled on April 23, 2015.

IT IS THE JUDGMENT of the undersigned that OLR's Motion for Default Judgment be and hereby is granted.

IT IS ORDERED THAT:

5. Paragraphs 4 – 36 of OLR's Complaint dated December 5, 2014 are proven to the requisite burden of proof.

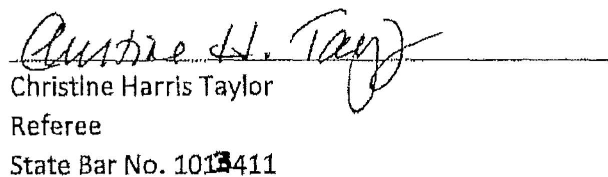
RECOMMENDATION:

6. OLR argues that [redacted]'s Wisconsin law license be suspended for two years.
7. OLR argues that [redacted] pay restitution in the amount of $43,369.74 to the *Estate of* [redacted], and
8. OLR argues that [redacted] be ordered to pay the costs of the disciplinary proceedings.

Based on all the foregoing circumstances, that:

9. [redacted]'s Wisconsin law license be suspended for two years.
10. [redacted] pay restitution in the amount of $43,369.74 to the *Estate of* [redacted].
11. [redacted] be ordered to pay the costs of the disciplinary proceedings.

Dated this 20th day of May, 2015.



Christine Harris Taylor
Referee
State Bar No. 1013411

FILED

JUL 01 2015

CLERK OF SUPREME COURT
OF WISCONSIN

STATE OF WISCONSIN IN SUPREME COURT

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST [redacted], ATTORNEY AT LAW. OFFICE OF LAWYER REGULATION, Complainant, [redacted], Respondent.	**REFEREE'S REPORT ON MOTION FOR DEFAULT JUDGMENT** CASE NO. 2014AP[redacted]D

FINDINGS OF FACT

1. On September 29, 2014, The Office of Lawyer Regulation (OLR), represented by Atty. [redacted], filed a five-count Complaint with the Supreme Court requesting that the Respondent, Atty. [redacted], be publicly reprimanded for violation of several Supreme Court Rules, and required to pay the cost of the instant proceedings.

2. Counts 1, 2 and 3 of the Complaint allege that [redacted]:

- accepted a fee from a client regarding future representation, and failed to communicate the scope of the representation, the basis of the fee and similar matters, in violation of SCR 20:1.5(b)(1) and (b)(2);

- failed to deposit the fee into his trust account, in violation of SCR 20:1.15(b)(4);

- failed to provide relevant information to OLR in its attempt to investigate the client's grievance in violation of SCR 22.03(2) and (6), enforceable under SCR 20:8.4(h).

3. Counts 4 and 5 of the Complaint allege that, in another case, [redacted]:

- failed to surrender the file to the client in a timely fashion after multiple written requests, in violation of SCR 20:1.16(d): and

- failed to provide relevant information to OLR in its attempt to investigate the client's grievance, in violation of SCR 22.03(2) and (6), enforceable under SCR 20:8.4(h).

4. According to the affidavit of Atty. , he was unable to serve the Complaint and Order to Answer on with reasonable diligence, and sent an authenticated copy of the Complaint and Order by certified mail to Sommers's office and home addresses. The former was returned with the Post Office message: "return to sender not deliverable as addressed unable to forward," and the latter was returned stamped "unclaimed" and "return to sender unable to forward."

5. [RESPONDENT] has failed to appear in any manner or form in these proceedings, and I consider all allegations of the Complaint to be established.

CONCLUSIONS OF LAW

1. OLR has established compliance with the service requirements of sec. 801.11(1), Wis. Stats., SCR 22.13(1), and SCR 22.11, and [RESPONDENT] is plainly in default.

2. I thus conclude that the allegations of the Complaint have been established and that, on this record, is in violation of the above-cited Supreme Court Rules and OLR is entitled to the relief it seeks.

3. OLR is hereby directed to serve a copy of this Report to Atty.

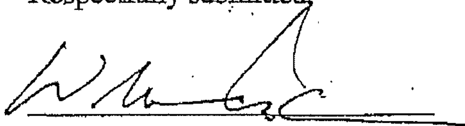
RECOMMENDATIONS

I recommend that the Wisconsin Supreme Court issue a Public Reprimand to Atty. for the violations found above.

I recommend that the Wisconsin Supreme Court order Atty. to pay the costs of this proceeding.

Dated at Madison, Wisconsin, this 29th day of June, 2015

Respectfully submitted,



William Eich, Referee

Referee's Report based on a Stipulation

STATE OF WISCONSIN IN SUPREME COURT

In the Matter of Disciplinary
Proceedings Against:
[respondent name]
Attorney at Law, Respondent.

REPORT AND RECOMMENDATION OF REFEREE

CASE NO. [case number]

This matter was commenced by the filing of a Complaint, an Order to Answer and Admission of Service in the Supreme Court of the State of Wisconsin on [date].

The undersigned was appointed as Referee by order of the Supreme Court on [date], pursuant to Supreme Court Rule 22.13(3). Attorney [Office attorney name] appears for the Office of Lawyer Regulation and Attorney [respondent name] appeared pro se.

Attorney [Office attorney name] appears for the Office of Lawyer Regulation. The Respondent, Attorney [respondent name], appears by Attorney [name].

An Answer was served and filed on behalf of the respondent on [date], admitting both the jurisdictional responsibility of the Board and that the respondent was an attorney duly licensed to practice law in the State of Wisconsin.

Pursuant to the terms of the Scheduling Order issued on [date], a hearing was scheduled to be held on [date] at [location]. Prior to the date of the final hearing, counsel for the Office and the Respondent informed the Referee of their expectation that they would reach a stipulated settlement and the hearing was removed from the calendar.

On [date], the Referee received the Stipulation of the parties, which is attached and incorporated by reference as Exhibit "A".

FINDINGS OF FACT

The undersigned Referee adopts the language in the "Facts" portion of the parties' Stipulation, from paragraph [number] through [number] verbatim, and incorporates it into this Report and Recommendation.

The allegations of the Complaint are proven by the requisite burden of proof.

CONCLUSIONS OF LAW

Tle Referee concludes as a matter of law that [etc.]

RECOMMENDATION

The Office argued that [etc.] Counsel for the Respondent argued that [etc.]
[Discussion, including aggravating and mitigating factors.]

Based on all the foregoing circumstances and in consideration of the aggravating and mitigating factors, it is the recommendation of the Referee that [etc.]

Dated this _____ day of _______________, _____

[signature]
Referee

[REPORT FOLLOWING STIPULATION INTO FACTS AND MISCONDUCT; SANCTION DISPUTED]

STATE OF WISCONSIN IN SUPREME COURT

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST [redacted]
ATTORNEY AT LAW

OFFICE OF LAWYER REGULATION, Case No. 2014 AP[redacted]-D

Complainant,

[redacted]

Respondent. Case Code: 30912

REFEREE'S REPORT

PROCEDURAL HISTORY

A. The Office of Lawyer Regulation, by retained counsel, Attorney [redacted], filed a complaint on September 5, 2014, which alleges six counts of professional misconduct. See Count One through Count Six of the complaint.

B. The parties entered into a stipulation, which was filed March 17, 2015. The stipulation is an agreement between the parties that the facts and allegations of the stipulation are agreed and are stipulated to and that the only issue left to be resolved is the appropriate sanctions to be imposed by the Supreme Court. The stipulation includes the disciplinary history for Attorney [redacted] only for the consideration of the referee in his report and recommendation of sanctions for this pending complaint. See stipulation on file.

FINDINGS OF FACT

The referee adopts the stipulation of the parties by reference as and for the finding of facts and incorporates them as though fully set forth herein.

CONCLUSIONS OF LAW

Upon the basis of the stipulation of the parties, I conclude that Attorney [redacted] is in violation of each Supreme Court rule as charged in all six counts of the complaint.

DISCUSSION

The Office of Lawyer Regulation urges the referee to recommend a six-month suspension of Respondent's Wisconsin license to practice law, [redacted]. [redacted] The OLR briefs and arguments are well done, reasonable in their recommendations to the referee, and cover all the appropriate matters to be considered by the referee and the Supreme Court in discipline matters. Please see briefs on file.

Respondent urges the referee to recommend that any suspension either be concurrent with his present suspension or be for a period less than six months. Respondent's briefs and arguments are likewise well done, reasonable in his recommendations to the referee, and cover appropriate matters to be considered by the referee and the Supreme Court in discipline matters. See briefs on file.

The crux of the case is why [redacted]. One justifiable explanation might be that Respondent's clients actually [redacted]. That issue has not been adequately covered in the stipulation or in the briefs. That type of argument, not having been made, must not now be further considered as a viable defense or explanation.

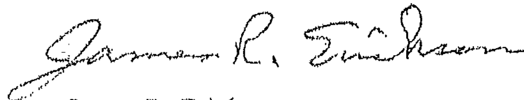
RECOMMENDATION

My recommendation is that the Supreme Court orders a sanction of license suspension for a two-month period, [redacted]. It is my opinion that six months of suspension is not necessary to meet the goals of Wisconsin's disciplinary system. [redacted]. Respondent's conduct has more to do with sloppy office supervision and inadequate staff and self-training than it has to do with intentional professional misconduct.

Costs, while not argued, should be assessed against Respondent.

Dated at Balsam Lake, Wisconsin, this 23rd day of June 2015.

Respectfully submitted,



James R. Erickson
Referee

IN THE MATER OF DISCIPLINARY PROCEEDINGS AGAINST [redacted], ATTORNEY AT LAW.

OFFICE OF LAWYER REGULATION,

Complainant;

[redacted],

Respondent.

ORDER

CASE CODE 30912

CASE NO. 12AP[redacted]-D

TO: Warden
c/o Columbia Correctional Institution
P.O. Box 950
Portage, WI 53901

The Office of Lawyer Regulation, by its attorney, [redacted], having made a motion before Referee Christine Harris Taylor for an order directing the Columbia Correctional Institution to produce [redacted] for a deposition and/or video deposition for use at the hearing, and the referee being advised as to all the facts and circumstances concerning the issue;

IT IS ORDERED that the Columbia Correctional Institution, through its appropriate employees, shall:

1. Make [redacted], an inmate at the facility, available for a discovery deposition to be conducted by respondent at a date and time agreed to by the parties; and

2. Make [redacted], an inmate at the facility, available for a video deposition to be used at the hearing to be initiated by Attorney [redacted] at a date and time agreed to by the parties.

Dated this _____ day of ____________________, 2013.

____
Referee Christine Harris Taylor

STATE OF WISCONSIN
SUPREME COURT

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

[redacted]

OFFICE OF LAWYER REGULATION

Complainant, Case No: 11AP[redacted]-D

[redacted]

Respondent.

PETITION FOR WRIT OF HABEAS CORPUS AD TESTIFICANDUM

TO: The Honorable Robert E. Kinney, Referee in the above entitled matter.

[redacted]. being first duly sworn on oath states as follows:

1. [redacted], a material witness in the above-entitled matter is presently confined at the Outagamie County jail in Appleton Wisconsin, in the custody of the Sheriff and/or Jail Division.

2. [redacted] is a material witness in the above entitled action which is pending in the Supreme Court of the State of Wisconsin, and evidentiary proceedings are scheduled at a hearing to be held commencing June 19th, 2012 at the Radisson Paper Valley Hotel in Appleton Wisconsin commencing at 9:00am.

WHEREFORE, Petitioner prays for the issuance of a Writ of Habeas Corpus Ad Testificandum directing the Sheriff of Outagamie County or his designee to deliver said inmate witness [redacted] before the undersigned at a time certain as set forth above.

Dated this ____day of May, 2012

[redacted]
Retained Counsel
Office of Lawyer Regulation

Subscribed to and sworn to before me
This _____day of May 2012

Notary Public
Dane County WI
My Commission is Permanent

ORDER FOR WRIT OF HABEAS CORPUS AD TESTIFICANDUM

THE STATE OF WISCONSIN: TO THE HONORABLE SHERIFF OF OUTAGAMIE COUNTY OR HIS DESIGNEE.

IT IS HEREBY ORDERED that you have the body of [redacted], a material witness in the above entitled matter, detained in your custody at the Outagamie County Jail appear before the Honorable Robert E. Kinney, Referee in the above entitled matter at a hearing to be held at the Radisson Paper Valley Hotel in Appleton Wisconsin on the 19th Day Of June, 2012 at 9:00 AM.

For the purpose of giving testimony in said proceedings; and immediately after said proceedings that you return her to said institution, under safe and secure conduct.

IT IS FURTHER ORDERED that you have said inmate witness at the place designated for the hearing 30 minutes prior to the time set for hearing to allow her time to meet with complainant's counsel.

Dated this _____day of ___________, 2012

Hon. Robert E. Kinney
Supreme Court Referee

STATE OF WISCONSIN | IN SUPREME COURT

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST [redacted], ATTORNEY AT LAW.

CASE CODE 30912

OFFICE OF LAWYER REGULATION,

CASE NO. 2004AP[redacted]-D

Complainant;

[redacted],

Respondent.

SUBPOENA DUCES TECUM

STATE OF WISCONSIN TO: [redacted]
CUSTODIAN OF RECORDS
ASSOCIATED BANK
P.O. BOX 19097
GREEN BAY, WI 54307-9097

PURSUANT TO SCR 22.42, YOU ARE HEREBY COMMANDED TO APPEAR IN PERSON before [redacted], Office of Lawyer Regulation [redacted], at 110 East Main Street, Suite 315, Madison, Wisconsin, on Monday, March 12, 2012 at 10:00 A.M. to provide documentation as set forth below to the Office of Lawyer Regulation relating to the above-captioned action.

YOU ARE FURTHER COMMANDED to bring with you copies of the following records relating to the Trust Account of Attorney [redacted], Associated Bank - Green Bay, Account No. [redacted]:

1. The signature card;
2. Monthly bank statements for the months of July 2010 to December 2011;
3. Any and all canceled checks, both front and reverse, that are listed on the bank statements for the months of July 2010 to December 2011;

4. Records of any and all cash withdrawals, wire transfers, cashier's checks, bank checks, money orders, and electronic transfers to or from the account for the months of July 2010 to December 2011;

In lieu of your personal appearance, this subpoena can be complied with by e-mailing electronic copies of the subpoenaed records to [redacted]@wicourts.gov prior to March 12, 2012. However, a failure to comply in that fashion or to appear may result in punishment for contempt.

Issued this ______ day of March, 2012.

Timothy L. Vocke
Supreme Court Referee

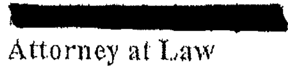
Referee Timothy L. Vocke
Vocke ADR
540 Spring Lake Rd
Rhinelander, WI 54501-3257

Drafted by:
[redacted]
[redacted]
Office of Lawyer Regulation
110 E. Main Street, Room 315
Madison, WI 53703-3383
Direct Phone: 608-267-8915

Please Note: Payment of your travel expense and witness fee shall be made upon submission of a claim to the OLR Director. Such payment need not be tendered with this subpoena. Wis. Stats. sec. 885.06(2).

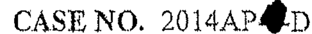
STATE OF WISCONSIN SUPREME COURT

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST:



Attorney at Law

ORDER FOLLOWING HEARING

CASE NO. 2014APD

The hearing in his matter occurred on September 8th through September 9, 2014. At the conclusion of the hearing, rather then giving closing statements, the parties requested the opportunity to file post-hearing arguments.

IT IS ORDERED:

1. OLR shall have until October 10, 2014, to file any optional post-hearing arguments on any and all issues raised during the hearing, including appropriate sanctions if any. The arguments may be made by way of letter, memorandum or brief.

2. The Respondent shall have until November 10, 2014, to file optional post-hearing arguments on any and all issues raised during the hearing, including appropriate sanctions, if any. The arguments may be made by way of letter, memorandum or brief.

3. OLR shall have until November 30, 2014, to reply to any written arguments filed by the Respondent.

4. Both parties shall affirmatively address the following in any submissions:

   A. Any restitution requested.

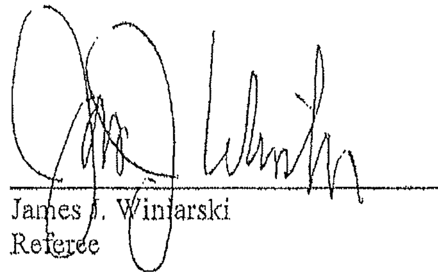
   B. Effective day for commencement of any sanctions.

C. Costs.

D. Any special conditions or sanctions sought.

5. The parties are reminded that the original of each filing should be made directly with the Wisconsin Supreme Court, with a copy to the referee and opposing counsel.

Dated at Milwaukee, Wisconsin, this 11th day of September, 2014.



James J. Winiarski
Referee

Referee's Report for a Public Reprimand

STATE OF WISCONSIN IN SUPREME COURT

In the Matter of Disciplinary
Proceedings Against:
[respondent name]
Attorney at Law, Respondent.

REPORT AND RECOMMENDATION OF REFEREE
CASE NO. [case number]

This matter was commenced by the filing of a Complaint, an Order to Answer and Admission of Service in the Supreme Court of the State of Wisconsin on [date].

Subsequently, an Answer was signed on [date] by Respondent's counsel, [name], and filed with the Supreme Court.

The undersigned was appointed as referee by order of the Supreme Court on [date], pursuant to Supreme Court Rule 22.13(3). Attorney [Office attorney name] appears for the Office of Lawyer Regulation and Attorney [name] appears for the Respondent.

In lieu of a hearing, the Office and the Respondent, through their respective attorneys, reached an agreement whereupon: 1) the Office would issue a public reprimand; 2) the Respondent would accept the public reprimand; and, 3) this action would be dismissed upon payment of costs incurred both by the Office and the Supreme Court.

A copy of the public reprimand of Attorney [respondent name] as well as the Consent signed by Attorney [respondent name], is attached and incorporated as Exhibit "A".

RECOMMENDATION

The agreement reached by the Office and the Respondent seems reasonable under the circumstances and, therefore,

IT IS THE RECOMMENDATION of the undersigned that the agreement between the Office of Lawyer Regulation and Attorney [respondent name] be accepted and that upon payment of costs this action be dismissed.

Dated this _____ day of _______________, _____

[signature]
Referee

STATE OF WISCONSIN | IN THE SUPREME COURT

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST, [redacted]
ATTORNEY AT LAW

CASE CODE 30912

OFFICE OF LAWYER REGULATION

CASE NO. [redacted]

Complainant;

FILED
OCT 1 8 2012
CLERK OF SUPREME COURT
OF WISCONSIN

[redacted]

Respondent.

REFEREE'S REPORT AND RECOMMENDATION

PROCEDURAL HISTORY

The Complainant, Office of Lawyer Regulation (hereinafter "OLR"), by its retained counsel, Robert Krohn, commenced this matter by filing a complaint and order to answer with the Supreme Court of Wisconsin on or about August 2, 2011. The Respondent, [redacted], filed an answer to the complaint on or about September 2, 2011. An amended complaint was filed on or about November 21, 2011[1]. Shortly thereafter, Attorney [redacted] appeared on behalf of the Respondent. I was appointed Referee by the Wisconsin Supreme Court on October 6, 2011.

I issued an initial scheduling order on November 21, 2011. Subsequent pretrial orders were entered on April 12, 2012, and May 23, 2012.

[1] The parties stipulated during the hearing that the original answer would serve as the answer to the amended complaint, with all unanswered allegations being denied. (T. 267-269)

The hearing in this matter commenced on June 13, 2012, at 9:00 a.m., at the Milwaukee Bar Association Building, 424 East Wells Street, the Cardozo Room, Milwaukee, Wisconsin. The hearing continued on June 26, 2012, and July 9, 2012. The hearing concluded at approximately 11:00 a.m. on July 9, 2012.

During the hearing, ORL asked that Counts 1 through 3 of the amended complaint be dismissed. There was no objection and the counts were dismissed. (T. 113)

I issued a post-hearing order on July 10, 2012. Any post-hearing briefs, memorandums or related writings were to be filed on or before August 27, 2012. Each party was given the opportunity to file a response to the other parties' argument on or before September 20, 2012.

ISSUES

The following Supreme Court Rules are at issue in this case:

SCR 20:1.3 Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

• • •

Former SCR 20:1.4(a) Communication (effective prior to July 1, 2007)[2]

(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

• • •

[2]The alleged misconduct in the [redacted] matter was from approximately March, 2007, to August 23, 2010.

SCR 20:1.4(a)(3) Communication

(a) A lawyer shall:

(3) Keep the client reasonably informed about the status of the matter;

• • •

SCR 20:1.4(a)(4) Communication

(a) A lawyer shall:

(4) Promptly comply with reasonable requests by the client for information;

• • •

SCR 20:1.5(a) Fees

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

• • •

Former SCR 20:1.5(b) Fees

(b) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

• • •

SCR 20:1.5(b)(3) Fees

(b)(3) A lawyer shall promptly respond to a client's request for information concerning fees and expenses.

• • •

SCR 20:1.15(b)(4) Safekeeping property; trust accounts and fiduciary accounts.

(b) Segregation of trust property.

(4) **Unearned fees and cost advances.** Except as provided in par. (4m), unearned fees and advanced payments of fees shall be held in trust until earned by the lawyer, and withdrawn pursuant to sub. (g). Funds advanced by a client or 3rd party for payment of costs shall be held in trust until the costs are incurred.

(4m) **Alternative protection for advance fees.** A lawyer who accepts advance payments of fees may deposit the funds in the lawyer's business account, provided that a court of competent jurisdiction must ultimately approve the lawyer's fee, or that the lawyer complies with each of the following requirements:

a. Upon accepting any advanced payment of fees pursuant to this subsection, the lawyer shall deliver to the client a notice in writing containing all of the following information:

1. the amount of the advanced payment;
2. the basis or rate of the lawyer's fee;
3. any expenses for which the client will be responsible;
4. that the lawyer has an obligation to refund any unearned advanced fee, along with an accounting, at the termination of the representation;
5. that the lawyer is required to submit any dispute about a requested refund of advanced fees to binding

arbitration within 30 days of receiving a request for such a refund; and

6. the ability of the client to file a claim with the Wisconsin lawyer's fund for client protection if the lawyer fails to provide a refund of unearned advanced fees.

b. Upon termination of the representation, the lawyer shall deliver to the client in writing all of the following:

1. a final accounting, or an accounting from the date of the lawyer's most recent statement to the end of the representation, regarding the client's advanced fee payment with a refund of any unearned advanced fees;

2. notice that, if the client disputes the amount of the fee and wants that dispute to be submitted to binding arbitration, the client must provide written notice of the dispute to the lawyer within 30 days of the mailing of the accounting; and

3. notice that, if the lawyer is unable to resolve the dispute to the satisfaction of the client within 30 days after receiving notice of the dispute from the client, the lawyer shall submit the dispute to binding arbitration.

c. Upon timely receipt of written notice of a dispute from the client, the lawyer shall attempt to resolve that dispute with the client, and if the dispute is not resolved, the lawyer shall submit the dispute to binding arbitration with the State Bar Fee Arbitration Program or a similar local bar association program within 30 days of the lawyer's receipt of the written notice of the dispute from the client.

d. Upon receipt of an arbitration award requiring the lawyer to make a payment to the client, the lawyer shall pay the arbitration award within 30 days, unless the client fails to agree to be bound by the award of the arbitrator.

• • •

SCR 20:1.16(d) Declining or terminating representation

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

• • •

FINDINGS OF FACT

1. The OLR was established by the Wisconsin Supreme Court and operates pursuant to Supreme Court Rules. The amended complaint was filed pursuant to SCR 22.11.

2. Respondent, [redacted] is an attorney licensed to practice law in the State of Wisconsin. The last known address provided by [redacted] to the State Bar of Wisconsin is [redacted]

3. [redacted] disciplinary history is:

> (a) Private *Reprimand* [redacted] delayed the filing of a writ for eleven months and did not respond to a client's telephone calls, emails, and letters for more than twenty months after filing the writ. She was found to have failed to act with reasonable diligence and promptness in representation of a client, in violation of SCR 20:1.3, and to have failed to promptly comply with reasonable requests for information and to explain a matter to the extent reasonably necessary to permit the client to make informed decisions, in violation of former SCR 20:1.4(a) and (b).
>
> (b) At the time the original complaint was filed in this matter, a disciplinary proceeding alleging additional misconduct was pending. In an opinion filed May 23, 2012, [redacted] received a 60 day licence suspension in relation to 11 counts of misconduct, which included: failing to act with reasonable diligence and promptness in representing a client; failing to communicate appropriately with a client; failing to promptly respond to a client's request for information concerning fees and expenses; failing to take steps to the extent reasonable to protect a client's interest; failing to cooperate with an OLR investigation into her conduct; willfully failing to provide relevant information, fully answer questions, or furnish documents during the course of an OLR investigation; and engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. [redacted]

MATTER[3]

4.) was convicted of one count of possessing firearms after having been previously convicted of a felony, in violation of 18 U.S.C. § 922(g)(1), and five counts of violating 26 U.S.C. § 5861(d) for possessing firearms not registered in the National Firearms Registration and Transfer Record.

5. On January 5, 2007, a judgment of conviction was entered against whereby he was sentenced to six concurrent terms of 84 months imprisonment – one term for his felony-in possession conviction under 18 U.S.C. § 922(g)(1) and five terms for his 26 U.S.C. § 5861(d) convictions, with two years of supervised release.

6. After sentencing, contacted Attorney Robert Henak (hereinafter "Henak") to file an appeal to the 7th Circuit Court of Appeals. Henak initiated the appeal, but, prior to the filing of appellant's brief, substituted as his attorney. had not previously represented

7. agreed to represent for a total of $20,000.00.

8. There was no written fee agreement between and . did not communicate to the basis or rate for her fee or the precise legal service covered by the fee. believed the fee covered a direct appeal to the United States Court of Appeals for the 7th Circuit, including a motion for rehearing, a motion for rehearing en banc, a Petition for Writ of Certiorari to the Supreme Court, a petition pursuant to 28 U.S.C. § 2255 to vacate the sentence, a motion pursuant to 18 U.S.C. §3143 for bail pending appeal, and various filings with the Department of Probation to correct the Pre-Sentence Report. maintains she did not promise any particular

[3]The parties presented this case one subject matter at a time. I will continue that pattern in this Report and I will make Finding of Facts and Conclusions of Law one subject matter at a time.

legal services for the agreed upon fee of $20,000.00, other than the appeal to the 7th Circuit and possible §2255 petition. [redacted] asserts the precise nature of legal service to be rendered for the $20,000.00 fee were dependent upon her review of the file. However, even after review of the file, [redacted] never stated the precise nature of the legal services to be rendered by her to [redacted]

9. [redacted] sought to raise a variety of issues in his appeal. Among other issues, [redacted] wanted: to challenge the late admission of a photograph introduced by the government at trial; he believed the search warrant used to search his home was defective; he claimed that new evidence existed to support his innocence; and he wanted to assert a claim of ineffective assistance of trial counsel.

10. [redacted] strategy for her direct appeal on behalf of [redacted] was twofold. She would attack the government's argument that [redacted] could be charged individually under § 5861(d) for each unregistered firearm in his possession. She would also attack the government's proof that tied [redacted] to the firearms or that [redacted] in fact possessed the destructive devices. Similar multiplicity and possession arguments had been offered during [redacted] trial. The trial court rejected those arguments.

11. [redacted] was scheduled to surrender to the Bureau of Prisons on March 5, 2007, and that date was stayed until March 25, 2007, after [redacted] petitioned for more time. Thereafter, [redacted] requested that [redacted] seek bail pending appeal. However, [redacted] never filed such a motion with the trial court, and [redacted] remained incarcerated during the appellate process.

12. [redacted] wrote [redacted] on April 4, 2007, and again on April 20, 2007, requesting information concerning the appeal and proposed motion for bond. Additionally, [redacted] called [redacted] on multiple occasions during this time period. [redacted] did not respond to [redacted] letters or calls.

13. On June 11, 2007, [redacted] filed her appellate brief in the 7th Circuit. She raised the two arguments concerning possession and multiplicity of counts.

14. On June 18, 2007, [redacted] wrote [redacted] after reading her brief and commented that she had not raised claims regarding the late admission of the photograph, the defectiveness of the search warrant, the existence of new exculpatory evidence, or the ineffective assistance of trial counsel. [redacted] did not respond to such communications from [redacted]

15. On June 27, 2007, [redacted] again wrote [redacted] asking for a response to the prior letter. [redacted] reiterated he had attempted to reach [redacted] by telephone without success. [redacted] did not respond to the letter from [redacted]

16. On July 2, 2007, [redacted] again wrote [redacted] and requested a response to his prior letters. He also requested a copy of the motion for bail pending appeal. [redacted] did not respond to the letter from [redacted]

17. On July 12, 2007, [redacted] wrote [redacted] again, noting that he had reviewed a draft motion for bail pending appeal. He requested a telephone conference with [redacted].

18. After [redacted] filed a reply brief on or about August 8, 2007, [redacted] wrote to [redacted] on August 14, 2007, and commented at length about her brief, pointing out areas that he believed were important.

19. [redacted] wrote [redacted] on September 27, 2007, and specifically asked her when issues regarding the defectiveness of the search warrant would be addressed. [redacted] did not respond.

20. [redacted] argued the case before the 7th Circuit on October 25, 2007.

21. From October 21, 2007, through December 31, 2007, [redacted] called [redacted] eighty-four times from the Federal Correctional Institution in Oxford, Wisconsin. [redacted] was consistently unavailable to speak with [redacted] and answer his questions concerning the appeal. In addition, [redacted]

friend, [redacted], called and emailed [redacted] regularly in an attempt to assist [redacted] in obtaining the status in his case, but was unable to reach [redacted] to discuss the various issues.

22. In an opinion dated January 22, 2008, the 7th Circuit affirmed [redacted]' conviction. The Court rejected the multiplicity argument, stating that multiple federal circuit courts had rejected this multiplicity argument, and that [redacted] – for unexplained reasons – never discussed or distinguished these other cases. The Court also rejected the insufficiency of evidence claim. According to the Court, [redacted] had conceded that the government had raised a case of constructive possession at the trial level.

23. [redacted] did not advise [redacted] that his appeal had been denied.

24. From January 1, 2008, through April 1, 2008, [redacted]s called [redacted] multiple times and was unable to communicate with her regarding his appeal.

25. In July of 2008, [redacted]s learned of the decision from a law clerk at the correctional institution.

26. [redacted] did not file any motions for rehearing or take further steps with respect to the direct appeal.

27. On December 30, 2008, [redacted] filed a motion under 28 U.S.C. § 2255 to vacate, set aside, or correct [redacted] sentence. Such a motion is considered an extraordinary remedy and requires a showing that the Court committed errors of law of constitutional dimension.

28. [redacted] motion raised two issues, the first being ineffective assistance of counsel and the second challenging the search warrant. According to [redacted] new testimony provided by [redacted] would show the warrant was defective. [redacted] did not attach any affidavits to support her position, and her supporting arguments were minimal.

29. On January 9, 2009, the trial court summarily denied [redacted] 28 U.S.C. § 2255 motion to vacate sentence, noting the motion lacked legal or evidentiary support.

30. [redacted] did not advise [redacted] of the Court's January 9, 2009, decision. [redacted] did not send [redacted] a copy of the Court's denial of the motion. [redacted] maintains she must have missed the Court's decision on the motion, given that it was sent to her only by email, and that she must have accidently deleted the decision from her computer.

31. On January 29, 2009, [redacted] sent [redacted]s a copy of her 28 U.S.C. § 2255 motion to vacate sentence, despite the fact that the motion had been denied prior to [redacted] sending this letter.

32. On February 5, 2009, [redacted] wrote [redacted] and asked about the 28 U.S.C. § 2255 motion. He also asked for a copy of his retainer agreement or engagement letter and also "a full written accounting of the time you have spent on my matter". [redacted] did not respond.

33. On May 13, 2009, [redacted] wrote [redacted] and noted she had not responded to his last four letters.

34. [redacted] wrote [redacted] again on August 8, 2009, requesting information on his appeal. He reiterated that he attempted to call [redacted] numerous times and was unable to reach her. According to [redacted] his former wife informed him that the Court had denied his motion to vacate.

35. From June 2009 through September 2009, [redacted] made many unsuccessful attempts to reach [redacted] by telephone from prison.

36. [redacted] and [redacted]s made numerous attempts to contact [redacted] regarding the § 2255 motion during this time frame, and [redacted]s staff repeatedly told them that the Court had made no ruling on the motion.

37. On September 3, 2009, [redacted]s wrote [redacted] again and asked about the status of the § 2255 motion to vacate.

38. On September 30, 2009, [redacted] wrote the Clerk for the 7th Circuit stating in his letter that he had been trying to reach the attorney who represented him in both matters by telephone and in writing "... to no avail". He asked the Chief Judge to order [redacted] to communicate with him regarding his matter.

39. On January 7, 2010, [redacted] filed a motion with the trial court to reopen the decision denying the § 2255 motion. His *pro se* request was denied. The Court indicated that a copy of the previous order denying the motion was sent to his lawyer in January 2009. The Court declined to extend the 180-day deadline rule that allows a Court to assist a litigant who has not received notice of a judgment. Since [redacted] filed his motion more than 180 days after the entry of the order, [redacted] motion was denied.

40. On February 12, 2010, [redacted]s wrote [redacted] and requested a copy of his file and a refund of fees.

41. On February 24, 2010, [redacted] again wrote [redacted], terminating his relationship with her and requesting a copy of his file, a return of unearned fees, and an accounting of her time.

42. On April 7, 2010, and on April 17, 2010, [redacted]s wrote OLR informing OLR that [redacted] had not returned [redacted] file. OLR communicated with [redacted] on several occasions suggesting she supply [redacted] with a copy of the file.

43. On June 10, 2010, [redacted]s wrote OLR and stated that, as of June 9, 2010, [redacted] had not provided him with a copy of his file.

44. On July 21, 2010, [redacted]s wrote OLR and indicated he still had not received his file from [redacted]

45. On July 28, 2010, OLR issued a Notice to Appear to [redacted] for an investigative interview.

46. [redacted] complied with the Notice and on August 23, 2010, appeared and answered questions posed by OLR. [redacted] also provided to OLR a complete copy of [redacted] file which OLR copied and forwarded to [redacted]

47. [redacted] did not furnish any accounting for her fees and did not return any portion of the $20,000.00 paid by [redacted]. However, the legal services [redacted] did render to [redacted], while lacking in communications with [redacted], justify the $20,000.00 fee and are not unreasonable.

[redacted] MATTER

48. Following a jury trial, [redacted] was convicted of one count of Burglary – Armed with a Dangerous Weapon and one count of Second Degree Endangering Safety While Armed. [redacted]

49. [redacted] was convicted on October 2, 2008, and on November 26, 2008, the Court sentenced [redacted] to five years imprisonment and five years extended supervision on each count with the sentences to run consecutively to each other and to any other sentence [redacted] might be serving.

50. On August 10, 2010, [redacted] filed motions with the Court of Appeals indicating that he was proceeding *pro se*. [redacted] then filed multiple postconviction motions with the trial court.

51. On August 25, 2010, the trial court denied [redacted] postconviction motions in writing. The Court issued its order without prejudice.

52. On the mistaken belief that [redacted] only had twenty days to file an appeal following the denial of his postconviction remedies, [redacted] spouse[4], [redacted] contacted [redacted] on September 7, 2010, and asked her to file an appeal on [redacted] behalf.

53. [redacted] paid [redacted] $2,500.00 on September 7, 2010, with the understanding that [redacted] would promptly file a motion with the Court of Appeals. [redacted] agreed to file a motion with the Court of Appeals prior to September 14, 2010, seeking to reinstate the appeal.

54. [redacted] deposited the $2,500.00 into the firm's (business) operating account and not the firm's trust account. [redacted] then sent a "Retainer/Fee Agreement" to [redacted] (Exhibit 1a), but [redacted] never signed or returned the fee agreement to [redacted] The fee agreement refers to the fee as "non-refundable." The fee agreement does not state: the basis or rate of the lawyer's fee; the ability of the client to file a claim with the Wisconsin lawyers' fund for client protection if the lawyer fails to provide a refund of unearned advanced fees; and that upon termination of the representation, the lawyer shall deliver to the client, in writing, a final accounting, regarding the client's advanced fee payment with a refund of any unearned advanced fees.

55. From September 7, 2010, through September 14, 2010, [redacted] took minimal action on [redacted]'s case. She did not file a notice of appearance with the trial court or the Court of Appeal and she did not file a motion seeking to reinstate the appeal. [redacted] did determine that [redacted] had already lost his appellate rights and that there was no September 14, 2010 deadline. [redacted] did not inform either [redacted] or [redacted] that [redacted] appellate rights were already lost and that there was no September 14, 2010 deadline.

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[4] The evidence suggests that [redacted] were not married, but thought of each other as spouses.

56. Between September 15, 2010, and September 27, 2010, [redacted] called [redacted] multiple times and informed her that she wished to terminate the representation and recover the $2,500.00 advanced fee. [redacted] terminated [redacted]'s representation on or about September 27, 2010.

57. Following the termination of the representation, [redacted] returned [redacted]'s file to [redacted]. [redacted] did not account for or refund any advanced fees.

58. [redacted] hired new counsel and the Court of Appeals granted [redacted] additional time in which to file either a notice of appeal or a new postconviction motion.

CONCLUSIONS OF LAW

[redacted]'S MATTER
AS TO COUNTS FOUR, FIVE, SIX, SEVEN, EIGHT AND NINE

COUNT FOUR

59. By failing to respond in a timely fashion to [redacted] repeated requests for information regarding the status of his appeal and his other requests for information, as indicated in [redacted] letters to [redacted] dated April 4, 2007, April 20, 2007, June 18, 2007, and June 27, 2007, [redacted] **failed to keep a client reasonably informed about the status of a matter and failed to promptly comply with reasonable requests for information, in violation of former SCR 20:1.4(a) (effective prior to July 1, 2007).**

COUNT FIVE

60. By failing to keep [redacted] reasonably informed about the status of his appellate matters, including the status of his direct appeal as well as his motion to vacate sentence pursuant

to 28 U.S.C. § 2255, despite numerous written and oral requests by [redacted] seeking the status of the matters, [redacted] **violated SCR 20:1.4 (a)(3).**

COUNT SIX.

61. By failing to comply promptly with [redacted] repeated requests for information regarding his appellate matters, despite numerous written and oral requests by [redacted] seeking information regarding his appellate matters, [redacted] **violated SCR 20:1.4(a)(4).**

COUNT SEVEN

62. By failing to explain her fees in a manner that allowed [redacted] to understand clearly what legal services would be provided, how they were to be charged, and how they were to be refunded in the event of an early termination, [redacted]**e failed to communicate the basis for her fee, in violation of former SCR 20:1.5(b).**

COUNT EIGHT

63. By failing to respond to [redacted] letters dated February 5, 2009, February 12, 2010, and February 24, 2010, seeking an accounting of legal fees and expenses, [redacted] **violated SCR 20:1.5(b)(3).**

COUNT NINE

64. By failing to surrender [redacted]' file in a timely fashion after multiple written requests, [redacted] **violated SCR 20:1.16(d).**

[redacted] MATTER
COUNTS TEN, ELEVEN, TWELVE AND THIRTEEN

COUNT TEN

65. OLR has failed to prove by clear, satisfactory, and convincing evidence that [redacted] violated SCR 20:1.3 by not taking any meaningful action on behalf of [redacted] during the period of time [redacted] represented [redacted]

COUNT ELEVEN

66. By keeping a $2,500.00 fee for representation she did not complete, [redacted] **charged an unreasonable fee in violation of SCR 20:1.5(a).**

COUNT TWELVE

67. By failing to deposit the $2,500.00 advanced fee into her trust account, and instead depositing the money into her law firm operating account with no evidence of utilizing the alternative fee placement permitted by SCR 20:1.15(b)(4m), [redacted] **violated SCR 20:1.15(b)(4).**

COUNT THIRTEEN

68. By failing to refund unearned fees to [redacted] [redacted] **violated SCR 20:1.16(d).**

DISCUSSION

[redacted] MATTER

The difficulties between [redacted] and [redacted] began as a result of the fact that there was no written fee agreement or oral understanding as to precisely what legal services [redacted] would perform

for [redacted] [redacted] pointed out several times during the hearing that her representation of [redacted] began before written fee contracts were required. She is correct that no written fee contract was required in 2007 when she began representing [redacted]. However, the fact that no written fee contract was required in 2007, is a different issue from whether there was a clear understanding between [redacted] and [redacted] as to what legal services she would perform for the $20,000.00 non-refundable fee.

During their initial meetings before [redacted] was incarcerated, [redacted] felt that he would get all necessary legal services for the $20,000.00 fee. He had discussed with [redacted], during their pre-hiring conferences, the fact that he believed he should get bail pending appeal. [redacted] also thought the fee covered the appeal to the7th Circuit, a § 2255 motion, review of his sentence and all other legal services, including a possible Petition for Writ of Certiorari to the Supreme Court.

[redacted] testified that in criminal matters, it is impossible to determine precisely what legal services will be appropriate until after she has a chance to totally review the file. While there is some truth to [redacted] position, certainly a written or oral understanding as to the basic nature of the legal representation was still possible. In addition, as [redacted] reviewed the file, either written or oral communications were necessary for her to express her strategy and recommendations to [redacted] Except for communications with [redacted] in relation to the direct appeal to the Circuit Court, I am satisfied that there were no meaningful communications between [redacted] and [redacted] as to the services she would perform during her representation of [redacted]

There is no doubt that [redacted] was a high maintenance client. As [redacted] acknowledged during the hearing, [redacted] wished to avoid serving prison time. He wanted everything possible done to avoid imprisonment and to shorten any period of time he would be in prison. He was a desperate individual. He made many phone calls to the [redacted] law office and to [redacted] on her cell phone. He also wrote many letters to [redacted] asking questions and inquiring as to the status of his case.

could have avoided many problems if she had reasonably responded to the communications sought by . Instead, seldom got through to when he attempted telephone communications. His written correspondence seeking information about his case went unanswered for the most part. The lack of communications led to make even more phone calls and write even more letters. I am most satisfied that did not reasonably respond to both written and oral communications from in relation to his case.

did not need to respond to every telephone call or every letter from . However, she should have periodically made an effort to communicate with . Ignoring repeated telephone calls and letters for weeks and even months is not reasonable communications.

has many excuses for her lack of communications with . She blames the fact that telephone calls from prisons are not clearly identified on telephone systems. She maintains that her staff does not take such telephone calls if is out of the office or busy. further maintains that she can not take telephone calls to her cell phone when she is involved in work at the courthouse or helping other clients. However, the Supreme Court Rules do not require that a lawyer immediately respond to all inquiries from a client, but rather that the attorney reasonably communicate with a client and keep him or her informed.

maintains that written communications to a client in the federal prison system are risky. She states that anything she puts in a letter to an inmate in a federal prison can backfire on her client and be used by other desperate inmates to the disadvantage of 's client.

I asked for expert testimony in the area of communications with a federal prisoner from other appellate criminal lawyers. Three such experts gave testimony during this hearing. I am satisfied from their collective testimony that written communications with a federal inmate are appropriate

and not inherently dangerous. Further, if had such concerns she should have addressed them to It is clear from the numerous letters wrote that he had no such concerns. He wanted his letters and telephone calls to answered.

also maintains that setting up scheduled telephonic conferences through the prison system are problematic. Again, I am satisfied from the expert testimony that an attorney who wishes to communicate with his or her client in the federal prison system can establish confidential telephone communications with that client.

was not able to produce any memorandums or notes of her alleged telephonic communications with . She maintains that keeping memos or notes of communications are dangerous for her client. She also suggests that her busy practice is such that it is not possible to document all communications with clients. She operates essentially on memory. Further, she was only able to produce a few copies of letters that she had written to , some of which maintained he never received.

I am most troubled by assertion and testimony during which she outlined the periods of time during which communications with a convicted criminal client are necessary and those periods during which there is nothing to communicate to the client. Such testimony suggests that communications with a client are only necessary when feels they are necessary. Such a position would mean that reasonable inquiries from a criminal client during periods in which thought no communications were necessary would be ignored.

I also reject any suggestion that case volume and an attorney's workload excuse an attorney from undertaking reasonable efforts to keep a client informed. has a fine reputation in the criminal defense area. Expert testimony supports the fact that she is an excellent criminal defense

lawyer. She has a very busy practice and is in high demand, as is her law firm. However, none of these facts excuse [redacted] from her duties and obligations to reasonably communicate with a client and to meet the same Supreme Court Rules as do other less busy criminal defense lawyers.

The evidence is quite clear that many letters written by [redacted]s to [redacted] went unanswered. [redacted] letters repeatedly refer to prior letters he wrote to [redacted]as being unanswered. The evidence supports the fact that [redacted] tried very hard to have meaningful communications with [redacted] and that he only resulted to progressively harsher language and the ultimate dismissal of [redacted] over the lack of communications.

The evidence shows that [redacted] did not respond to [redacted] request for a full accounting of the time she had spent in his case. [redacted] admits and the evidence shows that [redacted] ignored [redacted] request for a copy of his file after [redacted] was dismissed as his attorney. [redacted]s excuses, which included the file was too large to transmit to the prison and that she intended to drop the file off in person, are unacceptable. The file was not produced until OLR investigated the matter, which was many months after [redacted] initial request for his file.

[redacted] presented evidence that she has suffered personal health problems in recent years. She also offered evidence that she suffers from depression. However, [redacted] does not claim either problem caused her misconduct in this case and there was no expert testimony supporting such a conclusion. I also note that [redacted] denies misconduct in this case and thus she does not contend her personal health issues contributed to the alleged misconduct.

While [redacted] failed to furnish an accounting of her time and expenses during her representation of [redacted], I am satisfied that she did spend substantial time handling [redacted] file. Her time included investigation, file review, transcript review, a direct appeal to the7th Circuit, and a

§2255 motion and brief. While [redacted] may not be happy with the result of the legal services performed by [redacted], OLR has not requested and has not proven by clear, satisfactory and convincing evidence that any portion of the $20,000.00 fee should be returned.

[redacted] MATTER

[redacted] was retained by [redacted] initially to preserve [redacted] appellate rights, which [redacted] and [redacted] thought required legal action by September 14, 2010. During [redacted] representation of [redacted] determined that [redacted] had already lost his appellate rights and that there was no September 14, 2010 deadline. Any help [redacted] could give to [redacted] would first be by reinstatement of his appellate rights. While it would have been better practice for [redacted] to inform [redacted] and [redacted] that there was no September 14, 2010 deadline, I do not find that [redacted] failure to take any other action on behalf of [redacted] during her brief period of representation amounts to misconduct and a violation of SCR 20:1.3.

While [redacted] did check CCAP to determine the status of [redacted] case, I find that she did not perform any other meaningful legal services for [redacted] Her claim that she reviewed transcripts is not credible. [redacted] had a substantial jury trial to prepare for as she told [redacted] at the time she was retained. A staff member from the [redacted] law firm testified that she saw [redacted] reading [redacted] transcripts after [redacted] was retained by [redacted] However, [redacted] testified that she reviewed the transcripts over the weekend at home. In any case, [redacted] claim that she immediately reviewed the transcripts, thus justifying the $2,500.00 legal fee charge, is not supported by the evidence.

Here, as in the [redacted] matter, there is a lack of a meaningful understanding as to the precise nature of the legal services [redacted] will render. While there is a written fee contract here, [redacted] admits

it is not clear and that it contains errors. The evidence reveals that staff members typically put together "boiler plate" fee contracts in the normal course of business at the firm.

needs to understand the need for a meaningful written fee contract with clients when retained. I do not accept the premise advanced by that the precise nature of services to be rendered in criminal matters is difficult to state in writing at the commencement of representation. I also reject the notion that a revised understanding can not be reached with a client and placed in writing as a criminal case proceeds and new facts result in new direction for a case.

I sense that feels confined by written fee contracts and does not appreciate the need to reach a clear understanding with clients as to the precise nature of legal services to be rendered. The duties of a criminal defense lawyer are no different from any other lawyer. I also sense a great reluctance by to document communications with clients as representation proceeds.

placed the $2,500.00 unearned advanced fee into her business account. The amount should have been placed in her trust account. Her written and oral agreement with the client did not comply with SCR 20:1.15(b)(4). Simply calling an advanced fee "non-refundable" does not change the fact that it is an advanced fee subject to the requirements of the Supreme Court Rules.

Given the minimal amount of services rendered by to and the $2,500.00 does represent an unreasonable fee. In addition failed to account for or refund the unearned fees.

APPROPRIATE DISCIPLINE

The factors for consideration in imposing appropriate discipline for professional misconduct include: (1) the seriousness, nature and extent of the misconduct; (2) the level of discipline needed

to protect the public, the courts and the legal system from repetition of the attorney's misconduct; (3) the need to impress upon the attorney the seriousness of the misconduct; and (4) the need to deter other attorneys from committing similar misconduct. *In re Disciplinary Proceedings Against Carroll, 2001 WI 130, ¶ 40, 248 Wis.2d 662, 636 N.W.2d 718.*

Aggravating factors in this case include the fact that [redacted] recently received a 60 day suspension for multiple counts of misconduct. The misconduct in that case included repeated failures to communicate with clients and act diligently on their behalf. [redacted] pattern of not communicating with her clients in a meaningful fashion is troublesome. It is particularly troublesome to me when viewed in conjunction with [redacted] testimony that there are only particular times in a criminal case that communications are necessary between a lawyer and his or her client. While it would have been unreasonable to expect [redacted] immediately respond to every inquiry, whether oral or written, from [redacted] it is most reasonable to expect her to have done a much better job communicating with [redacted]

[redacted] did not express any remorse over her conduct. She was quick to blame her own clients for the communication problems that occurred in both of these matters. Her claim that written communications with clients in federal prison are dangerous and the reason she does not put communications in writing, was greatly exaggerated as shown by the testimony of the experts.

I am not sure this disciplinary case or the prior disciplinary cases have impressed upon [redacted] the need to communicate with her clients from the beginning to the end of her representation. I also do not believe she accepts the need to have a clear understanding of what legal services she will perform for criminal clients, both at the beginning of her representation and as the case develops. I sense she remains most reluctant to put anything in writing.

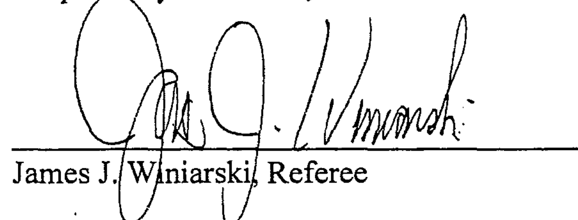
There are some mitigating circumstances in this case. has a reputation in the community as a fine criminal defense lawyer. Judge David Hansher testified that is a fine lawyer and that can be counted on by the Court to handle cases appropriately. She is well prepared and has earned the respect of the judiciary in Milwaukee and other counties. Judge Hansher further testified that he was totally surprised, as were other Milwaukee judges, over the7th Circuit actions against , as well as her previous 60 day suspension. I also note that except for a previous private reprimand in 2009, s misconduct problems seem to have occurred in recent years and that she was problem free during the early years of her career.

I have reviewed all cases cited by the respective parties in relation to appropriate discipline in this matter. I have also factored in aggravating and mitigating factors. I believe the range for appropriate discipline in this case is a suspension of four to six months. I am somewhat reluctant to accept OLR's recommendation of a four month suspension, given 's recent suspension for similar misconduct of 60 days. Simply adding two more months to the suspension in this case may not be enough to impress upon the need to change her ways. However, there was no direct dishonesty involved in the current case as there was in the previous disciplinary proceeding and OLR's recommendation of a four month suspension is within the range of appropriate discipline.

I recommend a four month suspension of s license to practice law in Wisconsin. I also recommend that she be ordered to refund the $2,500.00 retainer in the matter. I do not believe she should be ordered to make any refund of legal fees in the matter. should be ordered to pay all of the costs of this disciplinary proceeding.

Dated at Milwaukee, Wisconsin, this 16th day of October, 2012.

Respectfully submitted,



James J. Winiarski, Referee

STATE OF WISCONSIN IN SUPREME COURT

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST [redacted], ATTORNEY AT LAW.

OFFICE OF LAWYER REGULATION,

Complainant,

vs.

[redacted],

Respondent.

REFEREE'S RECOMMENDATION ON COSTS

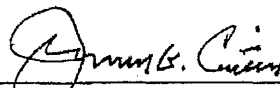
Case No. 14-AP-[redacted]-D

OLR served its Amended Statement of Costs on 9/17/15. Respondent [redacted] has not served an objection to the Statement of Costs.

While Mr. [redacted] ultimately stipulated to the facts and the sanction sought by OLR, OLR was required to retain counsel, file its Complaint, and a referee was appointed. It was not until the day before the scheduled hearing that Mr. [redacted] stipulated to the public reprimand sought by OLR.

Considering SCR 22.24, the referee recommends that the court follow its general policy to impose full costs upon the respondent.

Dated this 12 day of October, 2015.



James G. Curtis
Supreme Court Referee
State Bar No.: 1017951

RECEIVED
OCT 16 2015
OFFICE OF LAWYER REGULATION

STATE OF WISCONSIN IN SUPREME COURT

RECEIVED
DEC 12 2014
OFFICE OF LAWYER REGULATION

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST [redacted], ATTORNEY AT LAW.

CASE CODE 30912

OFFICE OF LAWYER REGULATION,

Complainant;

CASE NO. 13 AP [redacted]-D

[redacted],

COPY

Respondent.

PRE-APPELLATE RECOMMENDATION ON COSTS

I have received and reviewed OLR's Statement of Costs and Recommendation in this matter. No objection to the Statement of Costs has been received from the Respondent within the time period set forth under SCR 22.24 (2). The referee's recommendation on costs is governed by the factors set forth under SCR 22.24 (1m) (a) – (f). I agree with the analysis of those factors contained in [redacted]'s submission of November 13, 2014, and I hereby incorporate such analysis herein. I find that the amount of $[redacted] was reasonably and necessarily incurred in the investigation and prosecution of this matter. I know of no extraordinary circumstances, nor have any been brought to my attention, which would justify deviating from the standard policy and practice of imposing full costs in attorney misconduct cases.

For the reasons stated, I recommend that the respondent be ordered to pay all the pre-appellate costs of this proceeding, totaling $[redacted].

Dated this 8th day of December, 2014.

Respectfully submitted,

Robert E. Kinney, Referee

STATE OF WISCONSIN IN SUPREME COURT

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST
[redacted], ATTORNEY AT LAW.

OFFICE OF LAWYER REGULATION,

Complainant,

CASE NO. 2013AP[redacted]-D

v.

[redacted],

Respondent.

REFEREE'S RECOMMENDATION REGARDING COSTS

The referee makes this recommendation pursuant to SCR 22.16(7). On November 19, 2014 the Office of Lawyer Regulation (OLR) served its Pre-Appellate Statement of Costs and Recommendation. The OLR provided information regarding the factors articulated in SCR 22.24(1m)(a)-(f) and recommended a full assessment of costs against Respondent [redacted] [redacted]. Mr. [redacted] served an objection to the OLR's statement of costs on December 15, 2014. On December 19, 2014 the OLR served its reply to [redacted]'s objection and affirmed its statement and recommendation.

"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." SCR 22.24(1m). In addition, "[t]he supreme court may assess against the respondent all or a portion of the costs of a disciplinary proceeding in which misconduct is found ... and may enter a judgment for costs." SCR 22.24(1).

A referee must explain his or her recommendation by addressing the factors set forth in SCR 22.24 (1m). As stated in SCR 22.24(1m),

> 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 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 will consider the statement of costs, any objection and reply, the recommendation of the referee, and all of the following factors:
> (a) The number of counts charged, contested, and proven.
> (b) The nature of the misconduct.
> (c) The level of discipline sought by the parties and recommended by the referee.
> (d) The respondent's cooperation with the disciplinary process.
> (e) Prior discipline, if any.
> (f) Other relevant circumstances.

After careful consideration of these criteria, the referee agrees with the OLR's recommendation that full costs be assessed on the respondent. The litigation of the case did not include the type of extraordinary circumstances that would justify asking the Court to deviate from that policy.

- Attorney committed misconduct as to each of the eight charged counts.
- The nature of the misconduct demonstrated a pattern and practice of misconduct that rose to a level to justify the full imposition of costs.
- The level of discipline sought is a 60-day suspension.
- 's interactions with the disciplinary process did not result in any non-cooperation charges.
- has two prior public reprimands: , and
- OLR's counsel time and expenditures were largely caused by the manner in which elected to defend and try the case.

Although [redacted] asserts that "various discovery proceedings were included to respond to elements of the Complaint that were not necessary" and that "the amount of attorney fees incurred by the OLR is not justified," he does not cite specific examples of ways in which the OLR excessively litigated this proceeding.

The resultant costs of this disciplinary proceeding were incurred solely as a result of respondent's actions; therefore, it is appropriate to impose all costs upon Mr. [redacted].

RECOMMENDATION

IT IS RECOMMENDED that the cost of this disciplinary proceeding be imposed on [redacted] [redacted].

Dated: December 30, 2014

By: S/
Kevin L. Ferguson
Referee

Post Office Address:
1900 Hilldale Lane
Stoughton, WI 53589
Telephone: 608-692-7562
Email:

Referee's Report in a Medical Incapacity Case

STATE OF WISCONSIN IN SUPREME COURT

In the Matter of Medical Incapacity
Proceedings Against:
[respondent name]
Attorney at Law, Respondent.

REPORT AND RECOMMENDATION OF REFEREE
CASE NO. [case number]

This matter was commenced by the filing of a Petition alleging Medical Incapacity, an Order to Answer and Admission of Service in the Supreme Court of the State of Wisconsin on [date].

The undersigned was appointed as Referee by order of the Supreme Court on [date], pursuant to Supreme Court Rule 22.34(10). Attorney [Office attorney name] appears for the Office of Lawyer Regulation and Attorney [respondent name] appeared pro se.

Attorney [Office attorney name] appears for the Office of Lawyer Regulation. The Respondent, Attorney [respondent name], appears by Attorney [name].

An Answer was served and filed on behalf of the respondent on [date], admitting both the jurisdictional responsibility of the Board and that the respondent was an attorney duly licensed to practice law in the State of Wisconsin.

Pursuant to the terms of the Scheduling Order issued on [date], a hearing was scheduled to be held on [date] at [location]. The confidential medical records of [respondent name] were admitted into evidence. The medical records received by the Referee have been sealed and forwarded to the Wisconsin Supreme Court with the recommendation that those records, as well as those previously filed with the Supreme Court, shall remain sealed and be held in confidence, unless the Court orders otherwise in the future. No copies have been retained by the Referee.

FINDINGS OF FACT

[Specific diagnoses, etc., based on medical records and testimony.]

CONCLUSIONS OF LAW

The Referee concludes that [respondent name] has a medical incapacity within SCR 22.34.

RECOMMENDATION

Medical incapacity presents a danger to an attorney's clients and to the public in general. [Discussion.] Therefore, the referee's recommendation is that Attorney [respondent name]'s license to practice law in the State of Wisconsin be subject to certain conditions described as follows.

1. The respondent attorney shall continue to submit to a course of treatment, consultation and medication for his/her mental illness and s/he shall follow the advice of his/her treating psychiatric specialist.

2. The respondent attorney shall direct in writing to his/her treating psychiatric specialist, and such specialist shall agree, that in the event the respondent fails to follow his medical advice, including the taking of prescribed medication, he promptly will notify the Board of such failure by the respondent.

3. That respondent attorney shall direct in writing to his/her treating psychiatric specialist, and such specialist shall agree, to notify the Board promptly if the respondent becomes delusional during his/her treatment and consultation.

4. The respondent attorney shall direct in writing to his/her treating psychiatric specialist, and such specialist shall agree, to perform random drug screenings to verify that the respondent is in compliance with his requirements for his/her taking appropriate prescribed medication, and such specialist shall agree to make reports to the Board with respect to such random drug screenings.

5. The respondent attorney shall maintain a policy of professional malpractice insurance with a liability limit of at least $500,000, single limit, and shall furnish evidence of such coverage to the Office.

The costs of this proceeding shall be assessed against the respondent attorney.

Dated this _____ day of _______________, _____

[signature]
Referee

Referee's Report for Revocation by Consent

STATE OF WISCONSIN IN SUPREME COURT

In the Matter of Disciplinary
Proceedings Against:
[respondent name]
Attorney at Law, Respondent.

REPORT AND RECOMMENDATION OF REFEREE
CASE NO. [case number]

This matter was commenced by the filing of a Complaint, an Order to Answer and Admission of Service in the Supreme Court of the State of Wisconsin on [date].

The undersigned was appointed as referee by order of the Supreme Court on [date], pursuant to Supreme Court Rule 22.13(3).

An Answer was filed on [date] admitting the allegations of the complaint. A scheduling conference was held on [date]. At the scheduling conference, Attorney [respondent name] indicated that he would cooperate in a Petition for Revocation. Attorney [respondent name] signed the Petition for Revocation of License on [date].

The Office appears by Attorney [Office attorney name] and Attorney [respondent name] appears pro se.

FINDINGS OF FACT

A copy of the Petition for Revocation is attached as Exhibit #1, and the facts as disclosed in paragraphs [numbers] of the Petition for Revocation are adopted in their entirety as if fully stated herein.

CONCLUSIONS OF LAW

Attorney [respondent name] [etc.]

RECOMMENDATION

Based upon the stipulation admitted to this Referee, as well as the Answer to the Complaint, I hereby recommend that the Stipulation be approved by the Supreme Court and the license of Attorney [respondent name] be revoked. It is further recommended, as also contained in the stipulation, that all costs of this proceeding be assessed against Attorney [respondent name].

Dated this _____ day of _______________, _____

[signature]
Referee

[REFEREE'S REPORT FOLLOWING SCR 22.19 PETITION]

STATE OF WISCONSIN IN SUPREME COURT

In the Matter of Disciplinary Proceedings Against
[redacted]
Attorney at Law

Case No. 2014-AP[redacted]-D

OFFICE OF LAWYER REGULATION,

Complainant,

-vs-

[redacted],

Respondent

FILED
APR 23 2015
CLERK OF SUPREME COURT
OF WISCONSIN

REFEREE'S FINDINGS AND RECOMMENDATIONS PURSUANT TO SCR. 22.19

This matter is before this referee on Respondent's Petition for Revocation by Consent pursuant to SCR 22.19.[1] This Referee recommends that such Petition

[1] SCR 22.19 Petition for consensual license revocation.

(1) An attorney who is the subject of an investigation for possible misconduct or the respondent in a proceeding may file with the supreme court a petition for the revocation by consent or [sic] his or her license to practice law.

(2) The petition shall state that the petitioner cannot successfully defend against the allegations of misconduct.

(3) If a complaint has not been filed, the petition shall be filed in the supreme court and shall include the director's summary of the misconduct allegations being investigated. Within 20 days after the date of filing of the petition, the director shall file in the supreme court a recommendation on the petition. Upon a showing of good cause, the supreme court may extend the time for filing a recommendation.

(4) If a complaint has been filed, the petition shall be filed in the supreme court and served on the director and on the referee to whom the proceeding has been assigned. Within 20 days after the filing of the petition, the director shall file in the supreme court a response in support of or in opposition to the petition and serve a copy on the referee. Upon a showing of good cause, the supreme court may extend the time for filing a response. The referee shall file a report and recommendation on the petition in the supreme court within 30 days after receipt of the director's response.

(5) The supreme court shall grant the petition and revoke the petitioner's license to practice law or deny the petition and remand the matter to the director or to the referee for further proceedings.

be granted and that the Court order Respondent's Wisconsin law license be revoked and that Respondent be ordered to make restitution as specified herein.

BACKGROUND

1. The Office of Lawyer Regulation ("OLR") was established by the Wisconsin Supreme Court and operates pursuant to Supreme Court Rules.

2. OLR appears in this matter by [redacted] counsel, and respondent, [redacted] appears by Attorney [redacted]

3. [redacted] was admitted to practice law in the State of Wisconsin on [redacted]. Her current mailing address is [redacted].

4. On April 30, 2014, OLR filed a complaint against [redacted] alleging six counts of misconduct in a single client matter, requesting revocation and restitution. On June 4, 2014, [redacted] filed an answer to the complaint. In an order dated June 18, [redacted] was appointed the referee herein. In a motion dated June 24, [redacted] made a motion for substitution of referee Dugan.

5. In an order dated September 4, the undersigned was appointed the successor referee herein. At a scheduling conference on September 15, OLR was granted permission to file an amended compliant, which it did on October 27, and [redacted] answered the same in a pleading dated November 17. The amended complaint alleges twenty-three counts of misconduct involving four different

client matters. The amended complaint sought revocation of [redacted]'s Wisconsin law license and restitution in one of the four client matters. At a scheduling conference conducted on December 11, this matter was set for hearing to commence on April 28, 2015.

6. In a petition pursuant to SCR 22.19 dated March 27, 2015, [redacted] acknowledged that she could not successfully defend herself with respect to the misconduct allegations in the amended complaint. [redacted]'s petition further acknowledged that she was the subject of twenty-eight additional pending OLR grievance matters that had not been fully investigated or brought to the Preliminary Review Committee with respect to which she could not successfully defend herself. The amended complaint was attached to the petition as Appendix A, and a summary of the twenty-eight additional grievance investigations was set forth as an attached Appendix B. [redacted] also agreed that she should be ordered to make restitution as described herein. On March 30, OLR filed its recommendation supporting [redacted]'s SCR 22.19 petition.

THE MISCONDUCT ALLEGATIONS IN THE AMENDED COMPLAINT AND THE PENDING OLR INVESTIGATIONS

7. The amended complaint alleges six counts of misconduct in the [redacted] matter (counts 1-6); eight counts of misconduct in the [redacted] matter (counts 7-14); three counts of misconduct in the [redacted] matter (counts 15-17); and six counts of misconduct in the [redacted] matter (counts 18-23). Restitution is sought in the [redacted] matter.

8. In Appendix B to 's SCR 22.19 petition is a summary of twenty-eight additional grievance investigations which have not been concluded. These investigations are: (1) the matter; (2) the matter; (3) the matter; (4) the matter; (5) the matter; (6) the matter; (7) the matter; (8) the matter; (9) the matter; (10) the matter; (11) the matter; (12) the matter; (13) the matter; (14) the matter; (15) the matter; (16) the matter; (17) the matter; (18) the matter; (19) the matter; (20) the matter; (21) the matter; (22) the matter; (23) the matter; (24) the matter; (25) the matter; (26) the matter; (27) the matter; and (28) the matter. Restitution is sought in the , , , , , and matters.

FINDINGS

9. Based on 's petition and OLR's response thereto, this referee finds by clear, satisfactory and convincing evidence that has engaged in very serious misconduct which included: converting client funds; transferring clients' money without their consent; engaging in dishonesty, fraud, deceit or

misrepresentation; engaging in criminal acts; making multiple misrepresentations to both her clients and to OLR during OLR's investigations; submitting forged documents to her clients; engaging in a conflict of interest; entering into an ownership interest adverse to a client; entering into a business entity with non-lawyers; failing to enter into written fee agreements with her clients; failing to place advance fees in trust; engaging in incompetent representation; failing to consult with her clients regarding the consequences of the documents she had drafted for them; and failing to communicate with her clients. These actions or inactions by [redacted] are in violation of SCR 20:1.1; 20:1.2(a); 20:1.3; 20:1.4(a) and (b); 20:1.5(a) and (b); 20:1.7(a); 20:1.8(a); 20:1.15; 20:1.16(d); 20:5.4(b)(4); 20:8.4(b) and (c); and 20:03(6) enforced via 20:8.4(b).[2]

RECOMMENDATIONS

10. Based on [redacted]'s SCR 22.19 petition and the above findings, this referee recommends that the Court grant her petition and revoke [redacted] [redacted]'s license to practice law in the State of Wisconsin, and that the Court order [redacted] to make restitution in the following amounts and matters.

(A) [redacted] to [redacted] [redacted] [redacted], less any funds already provided by her to Ms. [redacted] in restitution;

(B) [redacted] to the Fund, attributable to the Fund's approval and payment on the claim of [redacted]

[2] In the interest of saving a tree . . . and perhaps my secretary's sanity . . . , all of these Rules will not be set forth in this report.

(C) ████ to ████, reduced by such amount as she may establish to the satisfaction of OLR represents the value of services she actually performed for Rosemary and Charles Reis;

(D) ████ to ████, reduced by such amount as she may establish to the satisfaction of OLR represents the value of services she actually performed for ████

(E) ████ to ████ reduced by such amount as she may establish to the satisfaction of OLR represents the value of services she actually performed for ████

(F) ████ to ████, reduced by such amount as she may establish to the satisfaction of OLR represents the value of services she actually performed for ████;

(G) ████ to ████ reduced by such amount as she may establish to the satisfaction of OLR represents the value of services she actually performed for ████;

(H) ████ to ████, reduced by such amount as she may establish to the satisfaction of OLR represents the value of services she actually performed for ████ ████; and

(I) ████ to ████, reduced by such amount as she may establish to the satisfaction of OLR represents the value of .services she actually performed for ████

There is nothing in the record before this referee that indicates ████ has been the subject of any prior discipline. This referee will withhold comment on the assessment of costs until that matter is presented to the undersigned pursuant to SCR 22.24(2).

Dated at Milwaukee, Wisconsin this 22nd day of April, 2015.

Richard C. Ninneman, Referee

Referee's Report for a Temporary Suspension

STATE OF WISCONSIN	IN SUPREME COURT
In the Matter of Disciplinary Proceedings Against: [respondent name] Attorney at Law, Respondent.	**REPORT AND RECOMMENDATION OF REFEREE** CASE NO. [case number]

This matter was commenced by the filing of a Complaint, an Order to Answer and Admission of Service in the Supreme Court of the State of Wisconsin on [date].

The undersigned was appointed as referee by order of the Supreme Court on [date], pursuant to Supreme Court Rule 22.13(3).

The respondent was ordered to answer the complaint within twenty days of service. S/He failed to do so.

The respondent was ordered by the Supreme Court on [date] to show cause by [date] why his/her license to practice law in the State of Wisconsin should not be temporarily suspended, pursuant to SCR 22.21(2), during the pendancy of this disciplinary action. The respondent failed to do so.

The respondent was informed that a scheduling conference by phone was set for [time] on [date]. S/He failed to attend.

The respondent was informed by Scheduling Order that (1) s/he was in default for failing to answer the Complaint as required; (2) s/he was required to show cause on or before [date] why his/her license should not be temporarily suspended; (3) s/he was required to appear at a hearing at [location] at [time] on [date].

On [date], the Office of Lawyer Regulation appeared by Attorney [Office attorney name] and after it was determined that the respondent was not present, a hearing was had and the allegations in the Board's Complaint were adopted by the undersigned by default on the record.

FINDINGS OF FACT

The undersigned finds that all the allegations contained in the Complaint are proven by the requisite burden of proof.

In addition, the respondent has failed to cooperate with or participate in this proceeding.

CONCLUSIONS OF LAW

Attorney [respondent name] has [etc.]

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is the recommendation of the undersigned that: (1) the respondent's license be immediately and temporarily suspended pursuant to SCR 22.21.

Dated this _____ day of _______________, _____

[signature]
Referee

[REFEREE'S REPORT – REINSTATEMENT]

STATE OF WISCONSIN	IN THE SUPREME COURT

IN THE MATTER OF:

DISCIPLINARY PROCEEDINGS AGAINST
[redacted]
ATTORNEY AT LAW

FILED
MAR 10 2015
CLERK OF SUPREME COURT
OF WISCONSIN

PETITION FOR REINSTATEMENT

Case No. 11AP[redacted]-D

REFEREE'S REPORT AND RECOMMENDATION

SUMMARY

On October 15, 2014, [redacted] filed a petition seeking reinstatement of his law license, which had been suspended for twelve months by decision and order of the Wisconsin Supreme Court rendered on January 4, 2013. On January 22, 2015, the Office of Lawyer Regulation (OLR) filed a comprehensive response not opposing the petition for reinstatement. Following a public hearing on February 10, 2015, this Referee finds and concludes that [redacted] has demonstrated by clear, satisfactory and convincing evidence that he has met the criteria set forth in SCR 22.31(1)(a)-(d)[1] and recommends to the Court that the petition be granted and [redacted]' law license be reinstated.

---

[1] SCR 22.31 Reinstatement hearing.

(1) The petitioner has the burden of demonstrating, by clear, satisfactory, and convincing evidence, all of the following:

(a) That he or she has the moral character to practice law in Wisconsin.

(b) That his or her resumption of the practice of law will not be detrimental to the administration of justice or subversive of the public interest.

THE PARTIES AND PROCEEDINGS

1. [redacted] was admitted to practice law in Wisconsin in [redacted] and practiced in the [redacted] area since admission. He has no prior disciplinary history. [redacted]

2. The OLR was created pursuant to SCR Chapter 21. Pursuant to SCR 22.30(2), the OLR is directed to investigate the particulars of petitions for reinstatement and the eligibility of persons filing same, and to file a response in support of or in opposition to such petitions. Pursuant to SCR 22.31(4), the Petitioner and OLR are directed to appear at the public hearing on such petitions.

3. The undersigned Michael F. Dubis was appointed as Referee herein on October 28, 2014, by order of the Supreme Court. Attorney [redacted] of [redacted], appeared for the petitioner, [redacted], and Attorney [redacted] appeared for the OLR. Status and scheduling conferences were conducted by telephone on November 17, 2014 and February 3, 2015. The public hearing was held on February 10, 2015, in the Business Suite of the Baymont Inn in Waterford, Wisconsin. Notice of such hearing was published by the OLR in the *Waukesha Freeman* on December 26, 2014 and in the December 2014 issue of *The Wisconsin Lawyer* so as to comply with SCR 22.30(3) and (4) (Exhibits 10

(c) That his or her representations in the petition, including the representations required by SCR 22.29(4)(a) to (m) and 22.29(5), are substantiated.

and 11). No interested persons appeared to present information in support of or in opposition to reinstatement under SCR 22.31(5).

4. At the public hearing, [redacted] testified on his own behalf in support of his petition. In addition to the professional character references whose names he provided to the OLR in the reinstatement questionnaire that [redacted] was asked to complete (Exhibit 7), [redacted] also presented letters of good character from his current employer, another attorney, several members of the local community and his wife (Exhibit 12). A complete exhibit list will be attached to the original sealed transcript of the public hearing proceedings.

5. Because SCR 22.31(5) provides that the "rules of evidence shall not apply, and the referee may consider any relevant information presented," this Referee read and considered each of the responses and letters (Exhibits 8 and 12) in making this report and recommendation, as well as a letter and follow-up email in opposition submitted to the OLR by Attorney [redacted], from the law firm that previously employed [redacted] (Exhibit 9).

6. At the February 2, 2015 prehearing conference, counsel for the petitioner advised this Referee that the Board of Bar Examiners had been provided with verifications of [redacted] being currently in compliance with the Court's CLE and EPR requirements for reinstatement, most recently completing a three-credit ethics CLE program in December 2014. If his license is reinstated,

---

(d) That he or she has complied fully with the terms of the order of suspension or revocation and with the requirements of SCR 22.26.

[redacted] has indicated he will continue to comply with the continuing legal education requirements, the rules and requirements of SCR Chap. 20 and would like to resume the practice of law in the area of worker's compensation in southeast Wisconsin.

SCR 22.29 PETITION FOR REINSTATEMENT

7. With the foregoing background information, this Referee will now address the requirements for a petition for reinstatement. SCR 22.29 provides:

> (4) The petition for reinstatement shall show all of the following:
>
> (a) The petitioner desires to have the petitioner's license reinstated.
> (b) The petitioner has not practiced law during the period of suspension or revocation.
> (c) The petitioner has complied fully with the terms of the order of suspension or revocation and will continue to comply with them until the petitioner's license is reinstated.
> (d) The petitioner has maintained competence and learning in the law by attendance at identified educational activities.
> (e) The petitioner's conduct since the suspension or revocation has been exemplary and above reproach.
> (f) The petitioner has a proper understanding of and attitude toward the standards that are imposed upon members of the bar and will act in conformity with the standards.
> (g) The petitioner can safely be recommended to the legal profession, the courts and the public as a person fit to be consulted by others and to represent them and otherwise act in matters of trust and confidence and in general to aid in the administration of justice as a member of the bar and as an officer of the courts.
> (h) The petitioner has fully complied with the requirements set forth in SCR 22.26.
> (j) The petitioner's proposed use of the license if reinstated.

(k) A full description of all of the petitioner's business activities during the period of suspension or revocation.

(4m) The petitioner has made restitution to or settled all claims of persons injured or harmed by petitioner's misconduct, including reimbursement to the Wisconsin lawyers' fund for client protection for all payments made from that fund, or, if not, the petitioner's explanation of the failure or inability to do so.

(5) A petition for reinstatement shall be accompanied by an advance deposit in an amount to be set by the supreme court for payment of all or a portion of the costs of the reinstatement proceeding. The supreme court may extend the time for payment or waive payment in any case in which to do otherwise would result in hardship or injustice.

The reference in subparagraph (h) to the requirements of SCR 22.26 relate to the actions a lawyer must take in notifying clients and courts that one's license has been suspended or revoked and as noted at footnote 1 beginning on page 1 of this Report, SCR 22.31 provides that a petitioner "has the burden of demonstrating, by clear, satisfactory, and convincing evidence, . . . (c) [t]hat his or her representations in the petition, including the representations required by SCR 22.29 (4)(a) to (m) and 22.29 (5), are substantiated."

8. Based on the testimony, exhibits and submissions filed with the Court and at the public hearing, this Referee finds by clear, satisfactory, and convincing evidence, that [redacted] sincerely desires to have his license reinstated; that [redacted] has not practiced law during the period of his suspension; that [redacted] has complied fully with the terms of the order of suspension and will continue to comply with them until his license is reinstated; that [redacted] has

maintained competence and learning in the law by attending identified educational activities; that ' conduct since the suspension has been exemplary and above reproach; that has a proper understanding of and attitude toward the standards that are imposed upon members of the bar and will act in conformity with these standards; that can safely be recommended to the legal profession, the courts and the public as a person fit to be consulted by others and to represent them and otherwise act in matters of trust and confidence and in general to aid in the administration of justice as a member of the bar and as an officer of the courts; that has fully complied with the requirements set forth in SCR 22.26; that if reinstated, intends to use his law license to resume practice in the area of ; that has made a full disclosure of all of his business activities during the period of his suspension, which activities are lawful and did not involve the practice of law; that there was no restitution required under (4m); that did pay the costs imposed upon him as part of his suspension order; and that has made the deposit required by (5).

THE OTHER REQUIREMENTS OF SCR 22.31

9. Having addressed SCR 22.31(c) regarding substantiation of his representations in his petition, this referee will now address the remaining standards of SCR 22.31, which are set forth at page 2 of this report. The remaining criteria are that has the burden of demonstrating by clear,

satisfactory and convincing evidence that he has the moral character to practice law in Wisconsin; that his resumption of the practice of law will not be detrimental to the administration of justice or subversive of the public interest; and that he has complied fully with the terms of the order of suspension and with the requirements of SCR 22.26, which relate to the notification of clients with respect to his suspension and the ceasing his practice as a result thereof. In this regard, this Referee notes that the record made at the public hearing, along with the SCR 22.30 Response of the OLR, which does not oppose [redacted] petition for reinstatement, confirm his compliance with the terms of the order of suspension and the requirements of SCR 22.26. Accordingly, this Referee finds that [redacted] has demonstrated such compliance by clear, satisfactory and convincing evidence.

10. With respect to [redacted] moral character and his resumption of the practice of law not being detrimental to the administration of justice or subversive of the public interest, this Referee references the judge's and attorneys' statements referenced in the OLR Response and at Exhibit 8, as well as the statements in the character reference letters submitted by [redacted] at the public hearing (Exhibit 12), and the statements in his petition, affidavit, and in his responses to the OLR reinstatement questionnaire. This Referee also notes [redacted] testimony at the February 10, 2015 public hearing, his acknowledgement of past professional misconduct, and his commitment not to engage in unethical practices or professional misconduct in the future, if his license to practice law is reinstated. Considering the above testimony, exhibits and submissions, as well as the

testimony of himself in support of his own petition, this Referee finds that petitioner has demonstrated by clear, satisfactory, and convincing evidence that he has the moral character to practice law in Wisconsin and that his resumption of the practice of law will not be detrimental to the administration of justice or subversive of the public interest.

RECOMMENDATION

11. has paid a very significant price for his professional misconduct, has shown that he understands his ethical duties and can be readmitted to practice, being mindful of those duties and the need for compliance. His suspension has resulted in significant economic hardship to him and his family, and reinstatement of his law license will allow him not only to resume his career as an attorney, but to . Accordingly, I recommend that petition for reinstatement be granted.

12. If the Court approves the Referee's recommendation to reinstate, I also recommend that be assessed the entire costs of the reinstatement proceeding, pursuant to SCR 22.24(1).

Dated this 17 day of February, 2013.

MICHAEL F. DUBIS, Referee