

# Memorandum

SUPREME COURT OF WISCONSIN  
OFFICE OF LAWYER REGULATION  
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*DATE:* September 17, 2013  
*TO:* Clerk of the Supreme Court and Court of Appeals  
ATTN: Carrie Janto  
*FROM:* Director, Office of Lawyer Regulation  
*SUBJECT:* Rule Petition 13-05: Response to Request for Information

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On August 5, 2013, Commissioner Julie Rich requested information regarding Rule Petition 13-05, Petition to create a procedure for enforcement of Supreme Court Disciplinary Orders. This response is submitted with the approval of the Board of Administrative Oversight.

OLR responds to the information requests as follows.

How do other states enforce disciplinary orders?

Other states use a variety of enforcement measures, including opening new investigative matters, seeking contempt, revoking probation, denying reinstatement, and activating previously stayed discipline.

How does OLR currently handle issues arising relating to enforcement of disciplinary orders?

OLR uses several methods. Most often, OLR reminds the lawyer of the obligation and is able to obtain compliance. On the occasions when a suspended lawyer who has failed to comply with the Supreme Court's order seeks reinstatement, OLR informs the Court or Referee and the matter is resolved in the context of the reinstatement. OLR may open a new investigative matter relating to the failure to obey the Court order. OLR may also seek enforcement directly from the Supreme Court.

How often do you anticipate the OLR would need to invoke the proposed rule?

One to five times a year.

Proposed SCR 22.18m provides for the filing of a "motion for contempt or enforcement." When might a motion for contempt be appropriate? When would a motion for enforcement be appropriate?

A motion for enforcement would be appropriate when the relief sought is discipline authorized by SCR 21.16. A motion for contempt would be appropriate when the relief sought is not authorized by SCR 21.16. See, e.g., Disciplinary Proceedings Against Haberman, 126 Wis. 2d 411 (1985); Disciplinary Proceedings Against Pasch, 127 Wis. 2d 144 (1986); Disciplinary Proceedings Against Strasburg, 217 Wis. 2d 318 (1998).

Should such a motion be verified and/or supported by affidavit?

A motion should be supported by an affidavit as when OLR files motions for temporary suspension pursuant to SCR 22.03(4) and SCR 22.21, even though these rules do not expressly require an affidavit.

Does the petition contemplate enforcement of all kinds of disciplinary orders or only orders imposing a financial obligation such as fees, costs, or restitution? In particular, should the proposal encompass enforcement of a lawyer's failure to comply with an order imposing conditions related to medical issues, mental health, substance abuse, and/or addiction-related matters?

The petition contemplates enforcement of all kinds of disciplinary orders, including orders imposing a financial obligation or trust account conditions, and specifically contemplates enforcement of conditions related to medical issues, mental health, substance abuse and/or addiction-related matters.

How does this proposal relate to SCR 21.16(2m)(c)?

Because SCR 21.16(2m)(c) provides a mechanism for the Wisconsin Lawyers' Fund for Client Protection to collect restitution ordered by the Supreme Court, the Fund may collect on the judgment. OLR informs those who have potential claims of the availability of the Fund.

When restitution is ordered on behalf of a private victim of attorney misconduct and the attorney does not comply, OLR would use the procedure proposed in the petition.

Would this proposal be used to assist private victims of attorney misconduct who have been unable [to] collect court-ordered restitution?

Yes, but only restitution ordered by the Supreme Court in the disciplinary order.

Whether the amendments will have retroactive application?

The amendments should be made effective on January 1 or July 1 after the Court's order and should apply to motions filed on or after the effective date.