

## INTRODUCTION TO ANNOTATIONS SCR, CHAPTER 21

This document contains annotations to Wisconsin's Lawyer Regulation System rules, Supreme Court Rules, Chapter 21. It is intended to assist the profession and the public in its research and understanding of how the rules regarding the lawyer regulation program and procedures have been interpreted by the Supreme Court.

Chapter 21 became effective October 1, 2000. [Supreme Court Order No. 99-03, dated September 25, 2000 (2000 WI 106).] Over the years, many changes have been made.

Order 01-12, dated November 14, 2001 (2001 WI 120) amended rules 21.01(1)(b), 21.03(6)(k), 21.03(7), 21.06 (title), 21.06(1), 21.06(2), 21.06(3), 21.06(4), 21.06(5), 21.07(1), 21.07(2), 21.11(2), 21.12, 21.14(2), 21.19, and 21.21.

Order 01-12A, dated January 23, 2002 (2002 WI 8) amended rules 21.05(1), 21.05(2), 21.12, 21.13, 21.14(1), 21.14(2), created rule 21.15(5), amended rules 21.19, and 21.21.

Order 04-10, dated May 5, 2005 (2005 WI 56) amended rules 21.06(1), 21.07, 21.10(1), 21.11(2), and 21.11(6).

Order 06-04, dated May 2, 2007 (2007 WI 48) renumbered rule 21.16 and created rule 21.16 (1m) (em), and (2m).

Order 08-28, dated May 14, 2010 (2010 WI 36) creating rule 21.03(9), and amending rule 21.19.

Order 13-04, dated July 6, 2015 (2015 WI 69) amending rule 21.08(1).

Order 14-06, dated April 21, 2016 (2016 WI 28) amending rule 21.02(1).

Cases cited in the annotations may apply to prior versions of a cited rule; therefore, care should be taken to identify the particular rule in effect. The Supreme Court Orders amending Chapter 21 can be found at [www.wicourts.gov](http://www.wicourts.gov), and by taking the links to "rules," then "supreme court," and then "orders."

This document contains the rules and comments in Supreme Court Rules, Chapter 21, as they were in effect on January 1, 2019. Following the each rule and any comments, this document contains annotations based on cases contained in the Compendium of Professional Discipline located at OLR's website: [www.wicourts.gov/olr](http://www.wicourts.gov/olr).

This document will be updated regularly. The next update is expected to be published in the spring of 2020. Corrections and suggestions are welcome and may be forwarded to OLR using the email link at the bottom of the website homepage or by correspondence to the Director at the address on the homepage.

## TABLE OF CONTENTS

### PREAMBLE

[SCR 21.001 Definitions.](#)

[SCR 21.01 Components.](#)

[SCR 21.02 Office of lawyer regulation.](#)

[SCR 21.03 Office of lawyer regulation - director.](#)

[SCR 21.04 Office of lawyer regulation - staff.](#)

[SCR 21.05 Office of lawyer regulation - counsel.](#)

[SCR 21.06 District committees.](#)

[SCR 21.07 Preliminary review committee.](#)

[SCR 21.08 Referees.](#)

[SCR 21.09 Supreme court.](#)

[SCR 21.10 Board of administrative oversight.](#)

[SCR 21.11 Training of lawyer regulation system participants.](#)

[SCR 21.12 Roles of office of lawyer regulation, grievant, and district committees.](#)

[SCR 21.13 Official duties.](#)

[SCR 21.14 Conflict of interests, recusal.](#)

[SCR 21.15 Duties of attorneys.](#)

[SCR 21.16 Discipline.](#)

[SCR 21.17 Medical incapacity suspension, conditions.](#)

[SCR 21.18 Limitation.](#)

[SCR 21.19 Privileges, immunity.](#)

[SCR 21.20 Cooperation with other agencies.](#)

[SCR 21.21 Cost of lawyer regulation system.](#)

## LAWYER REGULATION SYSTEM

### PREAMBLE

The lawyer regulation system is established to carry out the supreme court's constitutional responsibility to supervise the practice of law and protect the public from misconduct by persons practicing law in Wisconsin.

### ANNOTATIONS

The Supreme Court imposes professional discipline in order to protect the public from misconduct by persons practicing law in Wisconsin, and considers (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 [*Disciplinary Proceedings Against Birdsall*, 2004 WI 143, citing, *Disciplinary Proceedings Against Carroll*, 2001 WI 130. See also, *Disciplinary Proceedings Against Felli*, 2005 WI 58].

The Court has determined that a license suspension is an appropriate disciplinary sanction when necessary to protect the public [*Disciplinary Proceedings Against Hartigan*, 2005 WI 3; *Disciplinary Proceedings Against Hausmann*, 2005 WI 131]. The Court has considered conditions on reinstatement of a lawyer's license when necessary to supervise the practice of law and protect the public [*Disciplinary Proceedings Against Erspamer*, 2011 WI 85].

To supervise the practice and protect the public, the Office of Lawyer Regulation has been given the lead role in investigating and prosecuting attorney discipline cases [*Disciplinary Proceedings Against Konnor*, 2005 WI 37 (concurring opinion)].

The fact that the lawyer did not personally benefit from untimely filings or dismissal of the client's case was not a mitigating factor given the Court's duty to protect the public [*Disciplinary Proceedings Against Winkel*, 2015 WI 68].

Protecting the public from misconduct by attorneys occurs through the Court's review of reinstatement petitions and includes analysis of "whether the attorney seeking reinstatement has demonstrated that he/she has the necessary good moral character to practice law in this state and that his/her resumption of the practice of law will not be detrimental to the administration of justice or subversive of the public interest" [*Reinstatement of Washington*, 2008 WI 66].

### **SCR 21.001 Definitions.**

The terms used in this chapter have the meaning set forth in SCR 22.001.

### **SCR 21.01 Components.**

(1) The lawyer regulation system consists of the following:

- (a) Office of lawyer regulation, provided in SCR 21.02.
- (b) District committees, provided in SCR 21.06.
- (c) Preliminary review committee, provided in SCR 21.07.
- (d) Referees, provided in SCR 21.08.
- (e) Board of administrative oversight, provided in SCR 21.10.
- (f) Supreme court.

**SCR 21.02 Office of lawyer regulation.**

(1) The office of lawyer regulation consists of the director, investigative and support staff, and staff counsel and retained counsel. The office receives and responds to inquiries and grievances relating to attorneys licensed to practice law or practicing law in Wisconsin and, when appropriate, investigates allegations of attorney misconduct or medical incapacity, and may divert a matter to an alternatives to discipline program. The office is responsible for the prosecution of disciplinary proceedings alleging attorney misconduct and proceedings alleging attorney medical incapacity and the investigation of license reinstatement petitions. The office has discretion whether to investigate and to prosecute de minimus violations. Discretion permits the office to prioritize resources on matters where there is harm and to complete them more promptly.

(2) The office of lawyer regulation functions pursuant to the procedures set forth in SCR chapter 22.

**SCR 21.03 Office of lawyer regulation - director.**

(1) The director of the office of lawyer regulation is appointed by and serves at the pleasure of the supreme court.

(2) The director shall be admitted to the practice of law in Wisconsin no later than six months following appointment.

(3) The director is an employee of the supreme court under the supreme court's ultimate personnel authority and subject to personnel policies and procedures administered by the director of state courts.

(4) The performance of the director shall be formally evaluated every two years by the director of state courts, who shall consult with the staff of the office of lawyer regulation, the preliminary review committee, the board of administrative oversight, and attorneys who represent respondents in proceedings brought by the director. The director of state courts shall report the evaluation to the supreme court as a personnel matter.

(5) The director may not engage in the private practice of law.

(6) The duties of the director are:

(a) To investigate any possible misconduct or medical incapacity of an attorney licensed to practice law or practicing law in Wisconsin.

(b) To receive, review and direct the investigation of allegations of attorney misconduct or medical incapacity.

(c) To close an inquiry or grievance following preliminary evaluation and to dismiss a grievance following investigation when there is insufficient evidence of cause to proceed.

(d) To present as the director may consider appropriate the results of an investigation to the preliminary review committee for a determination of cause to proceed in the matter.

- (e) To file with the supreme court and prosecute complaints alleging attorney misconduct and petitions alleging attorney medical incapacity after a preliminary review panel has determined there is cause to proceed in the matter.
- (f) To divert a matter to an alternatives to discipline program as the director may consider appropriate and to monitor the attorney's participation in the program.
- (g) To monitor an attorney's compliance with conditions imposed on the attorney's practice of law.
- (h) To investigate petitions for license reinstatement and, at the request of the board of bar examiners, to investigate the character and fitness of an applicant for bar admission.
- (j) To employ, with the approval of the director of state courts, staff to assist in the performance of the director's duties.
- (k) To supervise the district committees.
- (m) To prepare annually a budget for the operation of the office of lawyer regulation and to submit it to the board of administrative oversight for review and presentation, with comment, to the supreme court.
- (n) To prepare annually a report of the activities of the office of lawyer regulation during the preceding year and to submit it to the board of administrative oversight for review and presentation, with comment, to the supreme court.
- (o) To delegate the duties specified in this rule to staff as the director may consider advisable.
- (p) To perform other duties as may be assigned by the supreme court.
- (7) The director may refer a matter alleging attorney misconduct or medical incapacity to a district committee for investigation.
- (8) The director may refer a matter involving a fee dispute to a state or local bar association's fee arbitration committee for resolution.
- (9) The director, with notice to the lawyer concerned, may refer a lawyer to a state bar lawyer assistance program for any of the following reasons:
  - (a) The lawyer has agreed to enter an alternative to discipline program and the director determines that a state bar lawyer assistance program would be the appropriate entity to monitor conditions.
  - (b) The lawyer is subject to conditions on the continued practice of law or conditions on seeking license reinstatement and the director determines a state bar lawyer assistance program would be the appropriate entity to monitor conditions.
  - (c) The lawyer has pleaded impairment or medical incapacity in response to an investigation or a complaint.
  - (d) The lawyer has exhibited or engaged in other behavior that provides a reasonable belief that the lawyer may be impaired or incapacitated.

**SCR 21.04 Office of lawyer regulation - staff.**

Staff of the office of lawyer regulation are permanent supreme court employees supervised by the director and over whom the director of state courts has ultimate personnel authority. Staff are subject to personnel policies and procedures administered by the director of state courts. Work assignments to staff are made in accordance with the chain of command established by pertinent job descriptions. Annual performance evaluations of staff are conducted by immediate supervisors in the manner prescribed by the director of state courts.

**SCR 21.05 Office of lawyer regulation - counsel.**

(1) Staff of the office of lawyer regulation may include persons admitted to the practice of law in Wisconsin whose duties are to conduct or assist in investigations, present matters to the preliminary review panels, prosecute complaints alleging attorney misconduct and petitions alleging attorney medical incapacity, conduct or assist in reinstatement investigations and represent the office of lawyer regulation in hearings, and perform other duties assigned by the director.

(2) The director may retain attorneys engaged in the practice of law in Wisconsin to assist in the performance of the director's duty to present matters to the preliminary review panels, to prosecute complaints alleging attorney misconduct and petitions alleging attorney medical incapacity, and to conduct or assist in reinstatement investigations and represent the office of lawyer regulation in hearings, and perform other duties assigned by the director. Retained counsel are independent contractors and serve at the pleasure of the director.

**SCR 21.06 District committees.**

(1) A district committee in each of the state bar districts established under SCR 10.05(2) consists of lawyers and public members appointed by the supreme court. The number of members of each committee shall be in proportion to the geographic and population size of the district. To the extent feasible, at least one-third and preferably two-fifths, of the members shall be public members. Members serve staggered 3-year terms. A member may serve not more than 3 consecutive 3-year terms.

(2) District committees function under the supervision of the director.

(3) The duties of a district committee are:

(a) To educate the bar and the public about the high ideals of the legal profession and the practice of law consistent with the rules of professional conduct for attorneys set forth in SCR chapter 20.

(b) To refer promptly to the director any possible misconduct or medical incapacity of an attorney that comes to its attention.

(c) To assist in the investigation of possible misconduct or medical incapacity of an attorney upon referral by the director.

(d) To make a recommendation to the director as it may consider appropriate as to the disposition of any matter the committee has investigated.

(e) To assist upon request of the director in monitoring an attorney's participation in an alternatives to discipline program or compliance with conditions imposed on the attorney's practice of law.

(f) To resolve or adjust at the request of the director a dispute between an attorney and a client or other attorney if the dispute does not involve misconduct or medical incapacity and the complaining person agrees to the procedure. Within 30 days after receiving notice of the dispute, the committee shall report to the director each dispute resolved, adjusted or unresolved.

(4) Each district committee shall hold regularly scheduled meetings as needed to complete its work timely. Meetings also may be held at the call of the chairperson. At the first meeting held each calendar year, the committee shall elect a chairperson and a vicechairperson to act in the absence of the chairperson. A majority of members

constitutes a quorum, except that the chairperson may designate a subcommittee of one or more members to conduct a preliminary investigation or investigative meeting and prepare a report and recommendation for consideration and action by the committee.

A subcommittee also may be designated to monitor an attorney's participation in a diversion from discipline program or compliance with conditions imposed on the attorney's practice of law.

(5) The portions of the meetings of a district committee relating to specific disciplinary matters are closed. The portions of the meetings relating to other matters are open.

#### **SCR 21.07 Preliminary review committee.**

(1) The 14-member preliminary review committee consists of 9 lawyers and 5 public members appointed by the supreme court. Members serve staggered 3-year terms. A member may serve not more than 2 consecutive 3-year terms.

(2) The preliminary review committee, having a quorum of 8 members, is comprised of 2 7-member panels, each having at least 4 lawyers and 2 public members and a quorum of 4 members. The chairperson of the preliminary review committee shall designate the members of each panel and shall devise and implement a rotation system by which each member of the committee serves on each panel during each 3-year period.

(3) The duties of the preliminary review panels are:

(a) To review the results of investigations of allegations of attorney misconduct or medical incapacity presented by the director and to determine whether there is cause for the director to proceed in the matter. The affirmative vote of four or more members of a panel is required to determine cause to proceed in a matter.

(b) To review at the request of a grievant the director's closing of a matter prior to investigation under SCR 22.02(6)(a) and dismissal of a grievance following investigation under SCR 22.05(1)(a).

(c) To confer periodically with the board of administrative oversight about the operation of the preliminary review committee and panels and suggest improvements in their operation.

(4) The preliminary review committee shall hold regularly scheduled meetings at least quarterly. At the first meeting of each calendar year, the preliminary review committee shall elect a chairperson and a vice-chairperson to act in the absence of the chairperson.

(5) Each panel shall meet as needed and shall report its determinations to the chairperson of the preliminary review committee.

(6) The portions of the meetings of the preliminary review committee and of the panels relating to specific disciplinary matters are closed. The portions of the meetings relating to other matters are open.

(7) The preliminary review committee and the panels shall take and retain full and complete minutes of the open and closed sessions of their meetings. The minutes of the open sessions are available to the public.

(8) The preliminary review panels shall function pursuant to the procedures set forth in SCR chapter 22.

(9) Members of the preliminary review committee are entitled to reimbursement for expenses incurred in connection with membership on the committee.

#### **SCR 21.08 Referees.**

(1) Members of a permanent panel of attorneys and reserve judges appointed by the supreme court shall serve as referees to conduct hearings on complaints of attorney misconduct, petitions alleging attorney medical incapacity, and petitions for license reinstatement, to make findings, conclusions and recommendations and submit them to the supreme court for review and appropriate action, and to review consensual discipline under SCR 22.09.

(2) Referees shall function pursuant to the procedures set forth in SCR chapter 22.

#### **SCR 21.09 Supreme court.**

(1) The supreme court determines attorney misconduct and medical incapacity and imposes discipline or directs other action in attorney misconduct and medical incapacity proceedings filed with the court.

(2) The supreme court shall meet with the director, with the preliminary review committee, and with the board of administrative oversight annually to discuss the operation of the lawyer regulation system and consider improvements in its operation.

#### **SCR 21.10 Board of administrative oversight.**

(1) The 12-member board of administrative oversight of the lawyer regulation system consists of 8 lawyers and 4 public members appointed by the supreme court. Members serve staggered three-year terms. A member may serve not more than two consecutive three-year terms.

(2) The duties of the board of administrative oversight are:

(a) To monitor the fairness, productivity, effectiveness, and efficiency of the attorney regulation system, including intake, the time required for disposition of an allegation of attorney misconduct or medical incapacity, the presence of a quorum at meetings of the preliminary review panels and the frequency of divided votes determining cause to proceed, variations in specific matters among the discipline sought by the director, the discipline recommended by the referee, and the discipline imposed by the supreme court.

(b) To monitor implementation of new procedures in the lawyer regulation system.

(c) To assess the public's and the bar's perception of the integrity of the lawyer regulation system.

(d) To report its findings to the supreme court.

(e) To review periodically with the supreme court the operation of the lawyer regulation system and to file an annual report with the supreme court of the system's activities during the preceding year.

(f) To propose for consideration by the supreme court substantive and procedural rules related to the regulation of lawyers.

(g) To inform and educate the public and the bar about the operation of the lawyer regulation system.

(h) To propose to the supreme court, after consultation with the director, an annual budget for the office of lawyer regulation.

(3) The board of administrative oversight has no substantive or procedural function in the lawyer regulation system as it concerns particular matters and does not exercise administrative oversight or supervision of the operation of the lawyer regulation system in respect to specific matters or proceedings involving allegations of attorney misconduct or medical incapacity. A member of the board may not contact investigative or



prosecutorial staff directly in respect to a particular investigative or prosecutorial matter, whether completed, pending or contemplated. A member of the board may contact investigative or prosecutorial staff directly and privately in respect to purely administrative matters.

(4) The board shall hold at least four regularly scheduled meetings each year. The meetings shall be open to the public except as otherwise provided by law. A majority of members currently serving constitutes a quorum of the board. At its first meeting each calendar year the board shall elect a chairperson, a vice-chairperson to act in the absence of the chairperson, and such other officers as it may consider necessary.

(5) The board shall take and retain full and complete minutes of the open and closed sessions of its meetings, including the identification of members whose motions, votes, and comments are recorded, and shall provide a copy of the minutes of the open session of each meeting to each member of the supreme court as soon as practicable following the meeting. The minutes of the open sessions are available to the public.

(6) Members of the board are entitled to reimbursement for expenses incurred in connection with membership on the board.

#### **SCR 21.11 Training of lawyer regulation system participants.**

(1) The director and current staff of the office of lawyer regulation shall provide formal training for new members of the staff.

(2) The director shall provide formal training in procedural and substantive ethics rules to the members of the district committees. Committee members shall attend at least one training session within the first year of appointment as a condition of appointment, unless the director extends the time to fulfill the training requirement.

(3) The director and current members of the preliminary review committee shall provide formal training to new members of the preliminary review committee.

(4) Staff of the supreme court shall provide formal training to the referees.

(5) The director and current members of the board of administrative oversight shall provide formal training to the new members of the board of administrative oversight.

(6) The training provided in (1) through (3) and (5) shall emphasize the role and the importance of the contributions of public member participants in the lawyer regulation system.

#### **SCR 21.12 Roles of office of lawyer regulation, grievant, and district committees.**

In the investigation process and in the prosecution of complaints alleging attorney misconduct and petitions alleging attorney medical incapacity, the director and staff of the office of lawyer regulation and the district committees do not represent the complaining person, the attorney against whom a grievance has been made, the bar generally, or any other person or group. The director, staff of the office of lawyer regulation, and district committees represent the interests of the supreme court and the public in the integrity of the lawyer regulation system in its search for the truth. A grievant is not a party to a misconduct or medical incapacity proceeding brought by the office of lawyer regulation.

**SCR 21.13 Official duties.**

When acting in the course of their official duties under SCR chs. 21 and 22, the following are acting on behalf of the supreme court in respect to the statutes and supreme court rules and orders regulating the conduct of attorneys:

- (1) The director and staff of the office of lawyer regulation.
- (2) Retained counsel.
- (3) Members of district committees.
- (4) Special investigators.
- (5) Members of the preliminary review committee.
- (6) Members of a special preliminary review panel.
- (7) Referees.
- (8) Members of the board of administrative oversight.
- (9) Attorneys designated by the director to monitor compliance with diversion agreements or with conditions imposed by the supreme court in misconduct and medical incapacity proceedings, or to investigate or conduct a hearing in a reinstatement proceeding.

**SCR 21.14 Conflict of interests, recusal.**

(1) The following may not take part in a matter in which they are 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 s. 757.19, 1997 stats. or recusal would be required under SCR 60.04(4):

- (a) The director and staff of the office of lawyer regulation.
  - (b) Retained counsel.
  - (c) Members of district committees.
  - (d) Special investigators.
  - (e) Members of the preliminary review committee.
  - (f) Members of a special preliminary review panel.
  - (g) Referees.
  - (h) Attorneys designated by the director to monitor an attorney's participation in a diversion from discipline program or compliance with conditions imposed on the attorney's practice of law.
  - (i) Members of the board of administrative oversight.
- (2) Allegations of misconduct or malfeasance against the director, staff of the office of lawyer regulation, retained counsel, a member of a district committee, a special investigator, a member of the preliminary review committee, a member of a special preliminary review panel, a referee, an attorney designated by the director to monitor an attorney's participation in a diversion from discipline program or compliance with conditions imposed on the attorney's practice of law, or a member of the board of administrative oversight shall be governed by the procedures under SCR 22.25.

**ANNOTATIONS**

Motions for recusal of a referee are submitted to the referee for decision [*Disciplinary Proceedings Against Eisenberg*, 2013 WI 37 (the lawyer submitted the motion to the

Supreme Court and asked the Court to appoint a different referee to decide the motion; but the Court referred the motion back to the original referee for decision)].

### **SCR 21.15 Duties of attorneys.**

(1) Pursuant to SCR 20:8.5(a), an attorney admitted to practice law or practicing law in Wisconsin is subject to the lawyer regulation system, whether he or she practices in Wisconsin or in other jurisdictions and regardless of where the attorney's conduct occurs.

(2) A license to practice law authorizes a person to practice law and to participate in the administration of justice. It is the duty of every attorney to act in conformity with standards imposed upon attorneys as conditions of the privilege to practice law set forth in SCR chapter 20: rules of professional conduct for attorneys.

(3) An attorney has the duty to refer a member of the public who wishes to communicate an inquiry about or a grievance against an attorney to the director.

(4) Every attorney shall cooperate with the office of lawyer regulation in the investigation, prosecution and disposition of grievances, complaints filed with or by the director, and petitions for reinstatement. An attorney's wilful failure to cooperate with the office of lawyer regulation constitutes violation of the rules of professional conduct for attorneys.

(5) An attorney found guilty or convicted of any crime on or after July 1, 2002, shall notify in writing the office of lawyer regulation and the clerk of the Supreme Court within 5 days after the finding or conviction, whichever first occurs. The notice shall include the identity of the attorney, the date of finding or conviction, the offenses, and the jurisdiction. An attorney's failure to notify the office of lawyer regulation and clerk of the supreme court of being found guilty or his or her conviction is misconduct.

## ANNOTATIONS

### *Jurisdiction*

A lawyer whose license is administratively suspended remains subject to discipline [*Disciplinary Proceedings Against Horsch*, 2017 WI 105].

### *Duty to Cooperate*

Subparagraph (4) requires a lawyer to cooperate with the Office of Lawyer Regulation. Failure to cooperate constitutes a basis for discipline [*Disciplinary Proceedings Against Armonda*, 2003 WI 136 (attempting to have clients withdraw their grievance); *Disciplinary Proceedings Against Converse*, 2006 WI 4 (failing to timely respond to requests for a response to the grievance and additional information); *Disciplinary Proceedings Against Hahnfeld*, 2007 WI 123 (failing to respond within 20 days to a grievance and to provide additional information); *Disciplinary Proceedings Against Jones*, 2008 WI 53 (failure to respond within 20 days to a grievance and failing to cooperate with a district committee investigation); *Disciplinary Proceedings Against Lamb*, 2011 WI 101 (failure to cooperate with the Office of Lawyer Regulation and with the district committee)].

### *Duty to Self-Report Conviction of a Crime*

Subparagraph (5) requires a lawyer to self-report a finding of guilty or conviction of a crime within 5 days to the Clerk of the Supreme Court and to the Office of Lawyer Regulation in writing [*Disciplinary Proceedings Against LeSieur*, 2010 WI 117 (the lawyer timely self-reported his conviction to the Office of Lawyer Regulation); *Disciplinary Proceedings Against Soldon*, 2010 WI 27 (a timely report of conviction complied with the rule, but failure to report another conviction violated the rule); *Disciplinary Proceedings Against Bielinski*, 2012 WI 123 (failure to notify in writing the Clerk of the Supreme Court and the Office of Lawyer Regulation); *Disciplinary Proceedings Against Johns*, 2014 WI 32 (A phone call to the Office of Lawyer Regulation during the plea hearing was not adequate to comply with the rule's requirement that written notice of a finding of guilt or conviction be provided to the Office of Lawyer Regulation and the Clerk of the Supreme Court; but the violation was "of the most technical variety," and was dismissed)].

### **SCR 21.16 Discipline.**

(1m) Any of the following may be imposed on an attorney as discipline for misconduct pursuant to the procedure set forth in SCR chapter 22:

- (a) Revocation of license to practice law.
- (b) Suspension of license to practice law.
- (c) Public or private reprimand.
- (d) Conditions on the continued practice of law.
- (e) Monetary payment.
- (em) Restitution, as provided under sub. (2m).
- (f) Conditions on seeking license reinstatement.

(2m) (a) An attorney may be ordered to do any of the following as restitution under sub. (1m)(em):

1. Pay monetary restitution to the person whose money or property was misappropriated or misapplied in the amount or value of such money or property as found in the disciplinary proceedings.
2. Reimburse the Wisconsin lawyers' fund for client protection for awards made to the person whose money or property was misappropriated or misapplied.

(b) Any payment made as restitution under par. (a) does not limit, preclude or impair any liability for damages in any civil action or proceeding for an amount in excess of the payment.

(c) Upon ordering restitution to the Wisconsin lawyers' fund for client protection under par. (a)2., the supreme court shall issue a judgment and furnish a transcript of the judgment to the Fund. The transcript of the judgment may be filed and docketed in the office of the clerk of court in any county and shall have the same force and effect as judgments docketed under ss. 809.25 and 806.16, stats.

### ANNOTATIONS

#### *Level of Discipline*

The Supreme Court determines the appropriate level of discipline for attorney misconduct [*Disciplinary Proceedings Against Nussberger*, 2009 WI 103 (“This court considers the seriousness of the misconduct, the need to protect the public, the courts, and the legal system from repetition of misconduct, the need to impress upon the attorney the seriousness of the misconduct, and the need to deter other attorneys from engaging in similar misconduct”)].

Voluntary resignation from the Bar is an inappropriate disposition of a disciplinary proceeding [*Disciplinary Proceeding Against Shepherd*, 2017 WI 66].

#### *Aggravating and Mitigating Factors*

A medical or psychological condition will be considered mitigation only if the condition is found to have caused the misconduct [*Disciplinary Proceedings Against Davig Huesmann*, 2018 WI 114].

The lawyer’s physical and mental state was given little weight as a mitigating factor because the evidence did not substantiate that there were mental disabilities and did not support a causal connection to the misconduct [*Disciplinary Proceedings Against Meisel*, 2017 WI 40].

#### *Effective Date of Suspension or Revocation*

The effective date of a suspension or revocation, generally, is either the date of the Court’s disciplinary decision or a specified date in the near future when needed for the lawyer to wind up the practice [*Disciplinary Proceedings Against Woods*, 2011 WI 46 (“Generally, a retroactive suspension is disfavored in the absence of some compelling circumstance.”)].

Exceptions occur for a variety of reasons. The Court may order a retroactive effective date – to the last day of a prior suspension – when the lawyer was previously suspended and the total length of suspension would be consistent with what would have been ordered had all matters been considered in one proceeding [*Disciplinary Proceedings Against Bennett*, 146 Wis. 2d 723 (1988); *Disciplinary Proceedings Against McNamara*, 157 Wis. 2d 279 (1990); *Disciplinary Proceedings Against Mandelman*, 182 Wis. 2d 583 (1994); *Disciplinary Proceedings Against Cooper*, 2013 WI 55; *Disciplinary Proceedings Against Hicks*, 2016 WI 31].

The Court may order a retroactive effective date when the misconduct occurred prior to the prior suspension [*Disciplinary Proceedings Against Soldon*, 2012 WI 122 (“The court will impose a sanction retroactively when ‘misconduct occurred prior to the [earlier] disciplinary proceeding and [the attorney’s] license has remained suspended well beyond the period of the suspension previously imposed.’”); *see also*, *Disciplinary Proceedings Against Cooper*, 2013 WI 55; *Disciplinary Proceedings Against Mandelman*, 2014 WI 100; *Cf.*, *Disciplinary Proceedings Against Wentzel*, 204 Wis. 2d 285 (1996) (misconduct occurred after the prior suspension); *Disciplinary Proceedings*

*Against Elverman*, 2014 WI 15 (although the lawyer’s misconduct occurred before the previous suspension, the lawyer “continued to take actions to the detriment of [the] estate past the time that his license to practice was suspended,” and the lawyer was “convicted of disorderly conduct as the result of a domestic violence incident that occurred” after the suspension); *Disciplinary Proceedings Against Schoenecker*, 2016 WI 27 (misconduct occurred subsequent to the prior suspension and no compelling circumstance justified a retroactive effective date)].

The Court may order a retroactive suspension or revocation to the date when the lawyer remained summarily or temporarily suspended in relation to the proceeding [*Disciplinary Proceedings Against Calhoun*, 196 Wis. 2d 665 (1995); *Disciplinary Proceedings Against Knickmeier*, 2004 WI 115; *Cf.*, *Disciplinary Proceedings Against Tully*, 2005 WI 100 (effective date not retroactive where the lawyer continued to practice law during the temporary suspension); *Disciplinary Proceedings Against Loew*, 2010 WI 23 (60-day suspension not made retroactive to a temporary suspension over 2 years earlier where the lawyer was also administratively suspended); *Disciplinary Proceedings Against Dahle*, 2015 WI 29 (asserted delays in processing the matter were attributed to the lawyer’s failure to cooperate with the investigation)].

In reciprocal discipline cases under Supreme Court Rule 22.22, the Court generally orders an effective date on the date of the Court’s order or a specific date in the near future [*Disciplinary Proceedings Against Rhees*, 2003 WI 110 (court rejected a stipulation for a retroactive effective date); *Disciplinary Proceedings Against Nickitas*, 2006 WI 20 (reciprocally disciplined lawyer was denied a retroactive effective date to the date of Minnesota suspension where the lawyer asserted he did not practice in either jurisdiction during the Minnesota suspension); *Disciplinary Proceedings Against Forstrom*, 2011 WI 88 (suspension was effective the date of the Court’s reciprocal discipline order where the lawyer’s California suspension had been retroactive to the date of an interim suspension); *Disciplinary Proceedings Against Eichhorn-Hicks*, 2012 WI 18 (request for retroactive reciprocal suspension was rejected where the lawyer failed to report the suspension to Wisconsin authorities and where a retroactive effective date would effectively allow the lawyer to avoid discipline in Wisconsin); *Disciplinary Proceedings Against Hooker*, 2014 WI 41 (the Court saw no reason to depart from the practice that the effective date of a revocation is the date of the Court’s order and rejected the request for an effective date retroactive to the Colorado temporary suspension); *Disciplinary Proceedings Against Nickitas*, 2014 WI 12 (the Court declined to order a retroactive date where the lawyer voluntarily ceased practice in Wisconsin during the period of the Minnesota suspension because the lawyer had the ability to practice in Wisconsin during that time and no special circumstances warranted a retroactive suspension); *Cf.*, *Disciplinary Proceedings Against Hooker*, 2012 WI 100 (The Court made a suspension retroactive in a reciprocal discipline case when necessary to provide for an identical sanction. The six month suspension was retroactive to the date of the Colorado suspension where the lawyer was licensed only in Wisconsin and practicing in Colorado and a retroactive effective date was appropriate to prevent doubling the suspension period)].

## *Progressive Discipline*

The Court has a general policy of progressive discipline: “Prior disciplinary cases have frequently followed a progressive discipline scheme” [*Disciplinary Proceedings Against Ray*, 2004 WI 45 (imposing a 6 month suspension in the second disciplinary matter involving the lawyer); *Disciplinary Proceedings Against Nussberger*, 2006 WI 111 (a pattern of similar misconduct, where the conduct at issue in the current proceeding occurred prior to the imposition of discipline in the prior proceeding); *Disciplinary Proceedings Against Anderson*, 2011 WI 39 (progressive discipline imposed where there was a pattern of similar misconduct); *Disciplinary Proceedings Against Eisenberg*, 2010 WI 11 (the Court revoked the lawyer’s license after stating, “If Attorney Eisenberg has no prior disciplinary history, or if he had a lesser disciplinary history, revocation would not be on the table”); *Disciplinary Proceedings Against LeSieur*, 2010 WI 117 (progressive discipline for repeated OWI convictions); *Disciplinary Proceedings Against Lamb*, 2011 WI 101 (the Court imposed the discipline recommended by the referee after ordering the parties to show cause why progressive discipline did not require a different sanction); *Disciplinary Proceedings Against Pierski*, 2011 WI 99 (progressive discipline imposed for similar misconduct); *Disciplinary Proceedings Against Brandt*, 2012 WI 8 (progressive discipline imposed for repeated OWI convictions); *Disciplinary Proceedings Against Kostich*, 2012 WI 118 (progressive discipline imposed for patter of similar misconduct); *Disciplinary Proceedings Against Dade*, 2014 WI 108 (progressive discipline imposed, but the analysis was complicated by the fact that the underlying misconduct was not reported to the Office of Lawyer Regulation for five years and occurred prior to other disciplinary sanctions); *Disciplinary Proceedings Against Netzer*, 2014 WI 7 (suspension imposed as progressive discipline where the lawyer repeated the same conduct for which he previously received a private reprimand); *Disciplinary Proceedings Against Osicka*, 2014 WI 33 (dissenting opinion) (the lawyer “is subjected to ‘progressive’ discipline. However, . . . [the] new violation preceded” the prior discipline); *Disciplinary Proceedings Against Voss*, 2014 WI 75 (progressive discipline was justified for a lawyer who had received two reprimands resulting in a suspension, but not a revocation); *Disciplinary Proceedings Against Boyle*, 2015 WI 110 (suspension justified as progressive discipline when the lawyer had received three private reprimands); *Disciplinary Proceedings Against Mulligan*, 2015 WI 96 (a nine-month suspension was warranted “by the facts and by the principle of progressive discipline.”); *Disciplinary Proceedings Against Strouse*, 2015 WI 83 (60-day suspension was “consistent with the principles of progressive discipline”)].

The Court’s progressive discipline policy does not always result in a sanction more serious than the previous matter [*Disciplinary Proceedings Against Kremkoski*, 2006 WI 59 (a 1997 private reprimand and 2004 public reprimand followed by a 2006 public reprimand where the timing of the underlying misconduct did not require a progressive sanction); *Disciplinary Proceedings Against Brandt*, 2009 WI 43 (two private reprimands and a public reprimand followed by a public reprimand)(dissenting opinion); *Disciplinary Proceedings Against Osicka*, 2009 WI 38 (progressive discipline not imposed where the subsequent misconduct did not warrant an increased sanction); *Disciplinary Proceedings Against Dade*, 2013 WI 21 (progressive discipline not imposed despite a pattern of

similar misconduct); *Disciplinary Proceedings Against Miller Carroll*, 2013 WI 101 (progressive discipline not imposed when a significant time has elapsed since the last disciplinary violation) (dissenting opinion stating that a five-month suspension following a one-year suspension “is not in keeping with our system of progressive discipline”); *Disciplinary Proceedings Against Hudec*, 2014 WI 46 (dissenting opinion) (imposing a public reprimand after the attorney had previously received three private reprimands and a public reprimand did not comport with the concept of progressive discipline); *Disciplinary Proceedings Against Crandall*, 2015 WI 111 (the referee recommended a public reprimand, considering the concept of progressive along with other sanction factors) (dissenting opinion noted that publicly reprimanding a lawyer with a reprimand and three prior suspensions did not apply the principle of progressive discipline); *Disciplinary Proceedings Against Adent*, 2016 WI 19 (dissenting opinion) (imposing a second public reprimand for an OWI 3<sup>rd</sup> and other misconduct “does not properly take into account this court’s commitment that discipline be generally progressive in nature”).

When the lawyer has no prior discipline, the concept of progressive discipline may be argued to support a more lenient sanction [*Disciplinary Proceedings Against Mitz*, 2015 WI 37 (the Court approved a recommendation for a public reprimand rather than a suspension: the lawyer had no prior discipline; and the concept of progressive discipline supported a public reprimand); *Cf.*, *Disciplinary Proceedings Against Din*, 2015 WI 4 (the Court imposed a public reprimand, rejecting a lawyer’s argument that “a private reprimand would fulfill all purposes of discipline and will be consistent with the Court [sic] adherence to a patter of progressive discipline”].

The Court may impose no discipline where a violation is found [*Disciplinary Proceedings Against Rajek*, 2015 WI 18; *Disciplinary Proceedings Against Johns*, 2014 WI 32 (dissenting opinion); *Disciplinary Proceedings Against Sommers*, 2014 WI 103 (dissenting opinion)].

### *Conditions*

The Court may impose conditions on an attorney’s license [*Disciplinary Proceedings Against Netzer*, 2014 WI 7 (“The conditions should be stated in such a way that they can be easily understood by the respondent attorney and the OLR and easily administered.” C.J. Abrahamson, dissenting)]. Conditions are imposed as a means to protect the public [*Disciplinary Proceedings Against Mandelman*, 2015 WI 105 (in light of the lawyer’s substantial disciplinary history, the Court rejected the lawyer’s request to be reinstated with conditions, and stated, “Conditions on practice are imposed to protect the public once an attorney has demonstrated reinstatement is warranted. Conditions do not and should not lower the bar to reinstatement”)].

Conditions may be on the lawyer’s continued practice [*Disciplinary Proceedings Against Kostich*, 2010 WI 136 (lawyer publicly reprimanded and ordered to obtain continuing legal education); *Disciplinary Proceedings Against LeSieur*, 2010 WI 117 (lawyer publicly reprimanded and ordered to provide medical releases, submit to an assessment and monitoring)], a requirement during the lawyer’s suspension [*Disciplinary*



*Proceedings Against Brandt*, 2012 WI 8 (assessment, treatment, and monitoring conditions imposed “during the period of his suspension”); *Disciplinary Proceedings Against Guenther*, 2012 WI 10 (conditions ordered 30 days and 60 days after the court order where the lawyer was suspended for 90 days)] a prerequisite for reinstatement from suspension or revocation [*Disciplinary Proceedings Against Goluba*, 2013 WI 32 (requirement to attend a trust account seminar “prior to seeking reinstatement”); *Disciplinary Proceedings Against Bryant*, 2014 WI 43 (as a condition of reinstatement to obtain a mental health evaluation stating the lawyer is capable of discharging the duties of a lawyer)], or a condition upon reinstatement [*Disciplinary Proceedings Against Gatzke*, 2016 WI 37 (to submit to trust account monitoring upon reinstatement)].

The Court may decline to impose conditions where a lawyer has decided to resign from practice; instead, the Court may assess the need for conditions if the lawyer seeks readmission (*Disciplinary Proceedings Against Ewald-Herrick*, 2014 WI 40 (public reprimand imposed but conditions withheld in light of the lawyer’s resignation)).

Court orders assessing costs are pursuant to Supreme Court Rule 22.24. Annotations relating to costs will be provided in the Annotations to Chapter 22. Court orders regarding restitution are annotated in the section following conditions.

The Court may impose a variety of types of conditions, e.g., [*Reinstatement of Gral*, 2010 WI 14 (prohibition on representing clients with whom the lawyer has business investments); *Disciplinary Proceedings Against Hammis*, 2011 WI 3 (complete an Office of Lawyer Regulation approved office management course); *Reinstatement of Woodard*, 2012 WI 41 (practice only in a firm subject to the direct supervisory authority of an attorney); *Disciplinary Proceedings Against Grenisen*, 2013 WI 99 (not provide any future legal representation to L.E.); *Disciplinary Proceedings Against Voss*, 2014 WI 75 (upon reinstatement, demonstrate the lawyer has a proper trust account in place); *Disciplinary Proceedings Against Wynn*, 2014 WI 17 (upon reinstatement prove restitution has been made and all claims settled); *Disciplinary Proceedings Against Dahle*, 2015 WI 29 (upon reinstatement, provide an accounting of funds in trust); *Disciplinary Proceedings Against Clark*, 2016 WI 36 (education in trust account management); *Disciplinary Proceedings Against Gatzke*, 2016 WI 37 (to submit to trust account monitoring upon reinstatement); *Disciplinary Proceedings Against Roitburd*, 2016 WI 12 (satisfy a court judgment); *Reinstatement of Stern*, 2016 WI 6 (payment of unaccounted trust account funds to the Unclaimed Property Unit of the Department of Revenue); *Disciplinary Proceedings Against Templin*, 2016 WI 18 (continuing legal education); *Reinstatement Proceedings of Kranitz*, 2016 WI 90 (compliance with consent orders of the Securities and Exchange Commission)].

The Court may also combine various types of conditions [*Disciplinary Proceedings Against Linehan*, 2015 WI 82 (monitoring by the Lawyers’ Assistance Program, continuing legal education, law office management consultation, and trust account monitoring)].

The Court frequently imposes conditions relating to assessment, treatment, and monitoring related to a lawyer's addiction or medical condition, e.g., [*Disciplinary Proceedings Against Bryant*, 2014 WI 43 (as a condition of reinstatement to obtain a mental health evaluation stating the lawyer is capable of discharging the duties of a lawyer); *Disciplinary Proceedings Against Soldon*, 2014 WI 24 (quarterly reports from the lawyer's treatment provider confirming sobriety and abstinence from gambling); *Disciplinary Proceedings Against Krogman*, 2015 WI 113 (signing medical releases, participating in an assessment by a provider chosen by the Office of Lawyer Regulation, monitoring as directed by the Office of Lawyer Regulation and if appropriate the Wisconsin Lawyers' Assistance Program, abstinence from alcohol and mood-altering drugs); *Disciplinary Proceedings Against Adent*, 2016 WI 19 (signing medical releases, participating in an assessment by a provider chosen by the Office of Lawyer Regulation, submit to monitoring as directed by the Office of Lawyer Regulation and if appropriate the Wisconsin Lawyers' Assistance Program, abstinence from alcohol and mood-altering drugs)].

A lawyer's request for a retroactive effective date for conditions was denied when the lawyer's prior supervision did not include all the Court's conditions [*Disciplinary Proceedings Against Mussallem*, 159 Wis. 2d 576 (1991)].

In reciprocal discipline cases, the Court may order the lawyer to comply with the conditions of the other jurisdiction's disciplinary order [*Disciplinary Proceedings Against Gall*, 2015 WI 71; *Disciplinary Proceedings Against Waters*, 2016 WI 15].

Enforcement of the Court's conditions orders may occur by motion and a Court order to show cause, or by a petition for suspension [*Disciplinary Proceedings Against LeSieur*, 2013 WI 39 (motion for suspension; lawyer suspended for noncompliance with conditions on practice); *Disciplinary Proceedings Against Linehan*, 2015 WI 82 (petition for suspension)]. The Court may enforce conditions ordered upon the conditional admission of a lawyer [*Disciplinary Proceedings Against Gall*, 2015 WI 71].

### *Restitution*

The Court may order a lawyer to make restitution to persons harmed by the lawyer's misconduct [*Disciplinary Proceedings Against Smead*, 2010 WI 4 ("Restitution is appropriate in these matters because there are ascertainable restitution amounts and fee disputes, the funds at issue are in the attorney's control, the grievants' or respondents' rights in a collateral matter will not be affected, and no funds to be restored constitute incidental or consequential damages"; *Cp.*, *Disciplinary Proceedings Against Nussberger*, 2009 WI 103 (the Court declined to order restitution after considering Office of Lawyer Regulation policy to seek restitution only when 1) the grievant's or respondent's rights in a collateral proceeding will not likely be prejudiced; 2) the funds to be restored do not constitute incidental or consequential damages; 3) the funds to be restored were in the respondent lawyer's direct control; and 4) there is a reasonably ascertainable amount.); *Disciplinary Proceedings Against Boyd*, 2010 WI 41 (rejecting a

grievant's request for restitution where awarding restitution would not comport with the Office of Lawyer Regulation's policy)].

Restitution was not ordered for the purpose of compensating "whistle-blower" activity [*Disciplinary Proceedings Against Steffes*, 2014 WI 128 (the Court rejected a referee's recommendation for restitution to a person for filing a grievance and bringing the attorney's trust account inadequacies to light)].

The Office of Regulation does not seek restitution for incidental or consequential damages; however, the Court ordered restitution in a case to compensate for duplicative work done by successor counsel [*Disciplinary Proceedings Against Wood*, 2013 WI 11].

When deciding whether to order restitution, the Court may review the sufficiency of the evidence regarding whether there is an ascertainable amount and determine the appropriate amount of restitution [*Disciplinary Proceedings Against Raneda*, 2012 WI 42 (paragraph 41, the G.O. case); *Disciplinary Proceedings Against Carranza*, 2014 WI 121 (*dissenting opinion*) ("a policy that rests a restitution decision on whether the disciplined lawyer has yet prepared a final accounting is subject to all sorts of mischief"); *Disciplinary Proceedings Against Mandelman*, 2014 WI 100 (records were lacking to determine to whom restitution might be ordered; nevertheless, the Court noted the requirement upon reinstatement to prove restitution has been made to persons harmed); *Disciplinary Proceedings Against Gatzke*, 2016 WI 37 (testimony offered by the Office of Lawyer Regulation was sufficient to ascertain the amount of restitution to be ordered)]. The Court may consider the decision by the Wisconsin Lawyers' Fund for Client Protection to pay a claim, and may order restitution to the Fund in that amount [*Disciplinary Proceedings Against Gegner*, 2017 WI 11].

Where the amount of restitution to be made is not ascertained, the Court may address the concern in the course of the lawyer's petition for reinstatement [*Disciplinary Proceedings Against Mularski*, 2010 WI 113; *Disciplinary Proceedings Against Carranza*, 2014 WI 121; *Disciplinary Proceedings Against Mandelman*, 2014 WI 100; *Disciplinary Proceedings Against Wynn*, 2014 WI 17]. The Court may also remand the question of restitution to the referee for a hearing and report [*Disciplinary Proceedings Against Ruppelt*, 2017 WI 80].

Where a decision had been made in a collateral proceeding, the Court did not order restitution [*Disciplinary Proceedings Against Gray*, 2018 WI 39; *Cp., Disciplinary Proceedings Against Gorokhovsky*, 2012 WI 120 (the Court did not order restitution, but questioned why OLR did not seek restitution when it alleged that the lawyer obtained the fees in violation of SCR 20:1.8(f), stating, "It would seem that a lawyer whose collection of fees is itself a violation of the ethics code should be made to disgorge those fees through a restitution award")].

Where another court order for restitution exists, the Court may order restitution consistent with the other court order [*Disciplinary Proceedings Against Elverman*, 2014 WI 15; *Disciplinary Proceedings Against Semancik*, 2015 WI 31] or impose a condition on

reinstatement that the lawyer show that restitution has been made or the judgment has been satisfied [*Disciplinary Proceedings Against Booker*, 2015 WI 2; *Disciplinary Proceedings Against Roitburd*, 2016 WI 12]. The Court has also ordered restitution based upon potential future court orders [*Disciplinary Proceedings Against Koch*, 2010 WI 106 (“as a condition of any future reinstatement, Attorney Koch shall prove he has made full restitution to his former client”); *Disciplinary Proceedings Against Laux*, 2015 WI 59 (“pay restitution consistent with any final monetary order or judgment issued in any civil or criminal case filed against her in connection with the misconduct alleged herein”)].

Where an obligation had been discharged in bankruptcy, the Court did not impose restitution [*Disciplinary Proceedings Against Dahle*, 2015 WI 29; *Disciplinary Proceedings Against Smoler*, 2015 WI 97].

The Court may order restitution, notwithstanding the fact that the statute of limitations would preclude the injured party from recovery at the time of the Court’s disciplinary order [*Disciplinary Proceedings Against Gende*, 2012 WI 107].

When the person harmed by the lawyer’s misconduct had died, the Court ordered restitution paid to the heirs [*Disciplinary Proceedings Against Sayaovong*, 2014 WI 94; *Disciplinary Proceedings Against Lister*, 2012 WI 102]. In a case where the person harmed could not be located, the Court directed that restitution be paid to the unclaimed property unit of the Office of the State Treasurer [*Disciplinary Proceedings Against Smead*, 2011 WI 102].

The Court routinely orders restitution to be paid prior to the payment of costs to the Office of Lawyer Regulation [*Disciplinary Proceedings Against Ryan*, 2009 WI 39; *Disciplinary Proceedings Against Trudgeon*, 2010 WI 103; *Disciplinary Proceedings Against Niesen*, 2011 WI 97; *Disciplinary Proceedings Against Stange*, 2012 WI 66; *Disciplinary Proceedings Against Wood*, 2013 WI 11; *Disciplinary Proceedings Against Grogan*, 2014 WI 39; *Disciplinary Proceedings Against Smoler*, 2015 WI 97; *Disciplinary Proceedings Against Gatzke*, 2016 WI 37].

The Office of Lawyer Regulation may bring a motion to enforce a restitution order [*Disciplinary Proceedings Against Lister*, 2012 WI 102].

**SCR 21.17 Medical incapacity suspension, conditions.**

The license of an attorney to practice law may be suspended indefinitely or conditions may be imposed on the attorney's practice of law with the attorney's consent or upon a finding that the attorney has a medical incapacity, pursuant to the procedure set forth in SCR chapter 22.

ANNOTATIONS

Annotations relating to medical incapacity and the procedures for medical incapacity proceedings are provided in the annotations for SCR, Chapter 22, Rules 22.34 to 22.36.

**SCR 21.18 Limitation.**

(1) Information, an inquiry, or a grievance concerning the conduct of an attorney shall be communicated to the director within 10 years after the person communicating the information, inquiry or grievance knew or reasonably should have known of the conduct, whichever is later, or shall be barred from proceedings under this chapter and SCR chapter 22.

(2) The time during which a person who knew or should have known of the attorney's conduct is under a disability as provided in Wis. Stat. § 893.16 (1997-98) and the time during which the attorney acted to conceal the conduct from or mislead the person who knew or should have known of the conduct regarding the conduct are not part of the time specified in sub. (1).

**SCR 21.19 Privileges, immunity.**

Communications with the director, staff of the office of lawyer regulation, a district committee, a special investigator, retained counsel, the preliminary review committee, and a special preliminary review panel alleging attorney misconduct or medical incapacity and testimony given in an investigation or proceeding under SCR ch. 22 are privileged. No lawsuit predicated on these communications may be instituted against any grievant or witness. The director, staff of the office of lawyer regulation, members of a district committee, special investigators, retained counsel, members of the preliminary review committee, members of a special preliminary review panel, referees, members of the board of administrative oversight, and persons designated by the director to monitor compliance with diversion agreements or with conditions imposed on the attorney's practice of law, shall be immune from suit for any conduct in the course of their official duties.

ANNOTATIONS

The rule was cited to deny a respondent lawyer's motion in a disciplinary case for sanctions against the agency and its counsel [*Disciplinary Proceedings Against Kalal*, 2002 WI 45 [motion for sanctions against the [Board of Attorneys' Professional Responsibility and counsel personally denied on grounds that they are immune from suit for conduct in the course of official duties]].

**SCR 21.20 Cooperation with other agencies.**

(1) The office of lawyer regulation shall cooperate with the board of bar examiners in matters of mutual interest. The office and the board may exchange confidential information and may conduct joint proceedings.

(2) The office of lawyer regulation shall cooperate with lawyer regulatory bodies from other jurisdictions and may share confidential information with them.

(3) The office of lawyer regulation shall cooperate with district attorneys in the state of Wisconsin and may share confidential information with them.

**SCR 21.21 Cost of lawyer regulation system.**

The cost of the office of lawyer regulation, the district committees, the preliminary review committee, all matters relating to investigation and prosecution of possible attorney misconduct and medical incapacity, reinstatement investigations and hearings, and the board of administrative oversight shall be paid from the appropriation provided in s. 20.680 (3) (h), 1997 stats.