

SUPREME COURT OF WISCONSIN

NOTICE

This order is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 01-12

**In the matter of the Amendment to
Supreme Court Rules relating to
the Lawyer Regulation System**

FILED

NOV 14, 2001

Cornelia G. Clark
Clerk of Supreme Court
Madison, WI

On September 20, 2001, the court held a public hearing on the petition filed on June 22, 2001, by the Director of the Office of Lawyer Regulation seeking to amend the Supreme Court Rules, including rules in chapters 10, 11, 12, 20, 21, 22, 31, 60, and 62, as they relate to the Lawyer Regulation System. The court has considered the matters presented at the public hearing and the materials filed in the matter.

IT IS ORDERED that, effective the date of this order, the Supreme Court Rules are amended as set forth herein.

IT IS FURTHER ORDERED that the remainder of the petition is held in abeyance pending further order of this court.

SECTION 1. 10.03 (5) (a) of the Supreme Court Rules is amended to read:

10.03 (5) (a) The annual membership dues for state bar operations for an active member shall be established as provided herein. Other classes of members shall pay the fraction of the dues of an active member as follows: Supreme Court Justices, the full amount; inactive member, one-half; judicial members, two-thirds; and members admitted to practice ~~three~~ for 3 years or less, one-half. For purposes of determining an active member's dues status based on the number of years admitted, there shall be no proration based on the exact month and year of admission. A fiscal year for which any dues are required to be paid under Bylaw 1, Section 2 shall count as a full year and a fiscal year for which no dues payment is required shall not count as a year. A change in the dues of an active member for state bar operations may be made by the board of governors or as set forth herein. The state bar shall include in the dues statement each year the amount necessary to pay the costs of the ~~Board of Attorneys Professional Responsibility~~ Lawyer Regulation System and of the continuing legal education functions of the Board of Bar Examiners as approved by the Supreme Court. Judicial members other than Supreme Court Justices are not liable to pay the portion of the annual dues for the costs of these boards. The state bar shall show separately on its annual dues statement the portion of the total dues for state bar operations and each of the boards.

SECTION 2. 11.06 (9) (e) of the Supreme Court Rules is amended to read:

11.06 (9) (e) An opinion from the professional ethics committee shall not be a prerequisite to a decision by the

special committee on group and prepaid legal services to file a complaint or report with the ~~board of attorneys professional responsibility~~ office of lawyer regulation in a situation in which the committee concludes that such a decision is warranted.

SECTION 3. 12.06 (6) of the Supreme Court Rules is amended to read:

12.06 **(6)** ACCESS TO ~~BOARD OF ATTORNEYS PROFESSIONAL RESPONSIBILITY OFFICE OF LAWYER REGULATION~~ FILES. Notwithstanding other supreme court rules to the contrary, during the investigation of a claim the committee or its designee shall have access to the files of the ~~board of attorneys professional responsibility~~ office of lawyer regulation which pertain to the alleged loss.

SECTION 4. 20:1.15 (f) of the Supreme Court Rules is amended to read:

20:1.15 **(f)** Upon request of the ~~Board of Attorneys Professional Responsibility~~ office of lawyer regulation, or upon direction of the Supreme Court, the records shall be submitted to the ~~board~~ office for its inspection, audit, use, and evidence under such conditions to protect the privilege of clients as the court may provide. The records, or an audit thereof, shall be produced at any disciplinary proceeding involving the attorney wherever material. Failure to produce the records shall constitute unprofessional conduct and grounds for disciplinary action.

SECTION 5. 20:1.15 (j) of the Supreme Court Rules is amended to read:

20:1.15 (j) In the event any properly payable instrument is presented against a lawyer trust account containing insufficient funds, whether or not the instrument is honored, the financial institution or investment institution shall, simultaneously with the customary overdraft notice to the depositor or investor, report the overdraft to the ~~Board of Attorneys Professional Responsibility~~ office of lawyer regulation.

SECTION 6. 20:1.15 (m) of the Supreme Court Rules is amended to read:

20:1.15 (m) The ~~Board~~ office of lawyer regulation shall hold each overdraft report for 10 business days or the minimum time required by the financial institution or investment institution, whichever is less, to enable the financial institution or investment institution to withdraw a report provided by inadvertence or mistake, except that the curing of an insufficiency of available funds by a lawyer or law firm by the deposit of additional funds does not constitute reason for withdrawing an overdraft report.

SECTION 7. 20:7.3 (b) of the Supreme Court Rules is amended to read:

20:7.3 (b) A written communication under ~~paragraph~~ par. (a) shall be conspicuously labeled with the word "Advertisement" and a copy of it shall be filed with the ~~Board of Attorneys Professional Responsibility~~ office of lawyer regulation within 5 days of its dissemination.

SECTION 8. 21.01 (1) (b) of the Supreme Court Rules is amended to read:

21.01 (1) (b) District ~~investigative~~ committees, provided in SCR 21.06.

SECTION 9. 21.03 (6) (k) of the Supreme Court Rules is amended to read:

21.03 (6) (k) To supervise the district ~~investigative~~ committees.

SECTION 10. 21.03 (7) of the Supreme Court Rules is amended to read:

21.03 (7) The director may refer a matter alleging attorney misconduct or medical incapacity to a district ~~investigative~~ committee for investigation.

SECTION 11. 21.06 (title) of the Supreme Court Rules is amended to read:

21.06 (title) District ~~investigative~~ committees.

SECTION 12. 21.06 (1) of the Supreme Court Rules is amended to read:

21.06 (1) A district ~~investigative~~ committee in each of the state bar districts established under SCR 10.05 (2) consists of lawyers and nonlawyers 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, and to the extent feasible, one-third of the members shall be nonlawyers. Members serve staggered ~~three-year~~ 3-year terms. A member may serve not more than ~~three~~ 3 consecutive ~~three-year~~ 3-year terms.

SECTION 13. 21.06 (2) of the Supreme Court Rules is amended to read:

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

SECTION 14. 21.06 (3) (intro.) of the Supreme Court Rules is amended to read:

21.06 (3) (intro.) The duties of a district ~~investigative~~ committee are:

SECTION 15. 21.06 (4) of the Supreme Court Rules is amended to read:

21.06 (4) Each district ~~investigative~~ 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 vice-chairperson 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.

SECTION 16. 21.06 (5) of the Supreme Court Rules is amended to read:

21.06 (5) The portions of the meetings of a district ~~investigative~~ committee relating to specific disciplinary

matters are closed. The portions of the meetings relating to other matters are open.

SECTION 17. 21.07 (1) of the Supreme Court Rules is amended to read:

21.07 **(1)** The ~~12-member~~ 14-member preliminary review committee consists of ~~8~~ 9 lawyers and ~~4~~ 5 nonlawyers appointed by the supreme court. Members serve staggered ~~three-year~~ 3-year terms. A member may serve not more than ~~two~~ 2 consecutive ~~three-year~~ 3-year terms.

SECTION 18. 21.07 (2) of the Supreme Court Rules is amended to read:

21.07 **(2)** The preliminary review committee, having a quorum of 8 members, is comprised of ~~two six-member~~ 2 7-member panels, each having ~~four~~ at least 4 lawyers and ~~two~~ 2 nonlawyers and a quorum of ~~five~~ 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 ~~three-year~~ 3-year period.

SECTION 19. 21.11 (2) of the Supreme Court Rules is amended to read:

21.11 **(2)** The director shall provide formal training to the members of the district ~~investigative~~ committees.

SECTION 20. 21.12 of the Supreme Court Rules is amended to read:

21.12 Roles of office of lawyer regulation, grievant, and district investigative 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 ~~investigative~~ 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 and district ~~investigative~~ 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.

SECTION 21. 21.14 (2) of the Supreme Court Rules is amended to read:

21.14 **(2)** Allegations of misconduct or malfeasance against the director, staff, retained counsel, a member of a district ~~investigative~~ committee, a member of a special investigative panel, 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 set forth in SCR 22.25.

SECTION 22. 21.19 of the Supreme Court Rules is amended to read:

21.19 Immunity. Communications with the director or staff, a district ~~investigative~~ committee, a member of a special investigative panel, 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 chapter 22 are privileged, and no lawsuit predicated on those communications may be instituted against any grievant or witness. The director, staff, members of a district ~~investigative~~ committee, members of a special investigative panel, retained counsel, members of the preliminary review committee, members of a special preliminary review panel, referees, and members of the board of administrative oversight shall be immune from suit for any conduct in the course of their official duties.

SECTION 23. 21.21 of the Supreme Court Rules is amended to read:

21.21 **Cost of lawyer regulation system.** The cost of the office of lawyer regulation, the district ~~investigative~~ committees, the preliminary review committee, all matters relating to investigation and prosecution of possible attorney misconduct and medical incapacity, and the board of administrative oversight shall be paid from the appropriation provided in Wis. Stat. § 20.680 (3) (h) (1997-98).

SECTION 24. 22.001 (6) of the Supreme Court Rules is amended to read:

22.001 **(6)** "Grievant" means the person who presents a grievance, except that a judicial officer or a district

~~investigative~~ committee who communicates a matter to the office of lawyer regulation in the course of official duties is not a grievant.

SECTION 25. 22.04 (title) of the Supreme Court Rules is amended to read:

22.04 (title) **Referral to district ~~investigative~~ committee.**

SECTION 26. 22.04 (1) of the Supreme Court Rules is amended to read:

22.04 **(1)** The director may refer a matter to a district ~~investigative~~ committee for assistance in the investigation. A respondent has the duty to cooperate specified in SCR 21.15 (4) and 22.03 (2) in respect to the ~~investigative~~ district committee. The committee has the power to subpoena and compel the production of documents specified in SCR 22.03 (7) and 22.42.

SECTION 27. 22.04 (3) of the Supreme Court Rules is amended to read:

22.04 **(3)** The ~~investigative~~ district committee shall conduct an investigation and file an investigative report with the director within 90 days after the date of referral. The investigative report shall outline the relevant factual allegations and identify possible misconduct, if any, and may make a recommendation as to the disposition of the matter. The ~~investigative~~ district committee shall include in reports to the director all relevant exculpatory and inculpatory information obtained.

SECTION 28. 22.25 (1) of the Supreme Court Rules is amended to read:

22.25 **(1)** Allegations of misconduct against the director, a lawyer member of staff, retained counsel, a lawyer member of a district ~~investigative~~ committee, a lawyer member of the preliminary review committee, a lawyer member of the board of administrative oversight, or a referee shall be referred by the director for investigation to a special investigative panel composed of six lawyers appointed by the supreme court who are not currently participating in the lawyer regulation system and are not among the lawyers from whom retained counsel is selected under SCR 21.05. A matter referred by the director shall be assigned to a member of the special investigative panel in rotation.

SECTION 29. 22.25 (8) of the Supreme Court Rules is amended to read:

22.25 **(8)** Allegations of malfeasance against the director, retained counsel, a member of a district ~~investigative~~ committee, a member of the preliminary review committee, a member of the board of administrative oversight, or a referee shall be referred by the director to the supreme court for appropriate action.

SECTION 30. 22.40 (1) of the Supreme Court Rules is amended to read:

22.40 **(1)** Prior to the filing of a misconduct complaint, medical incapacity petition or petition for temporary license suspension, all papers, files, transcripts and communications in

any matter involving the office of lawyer regulation are to be held in confidence by the office of lawyer regulation, the district ~~investigative~~ committees, and the preliminary review committee. Following the filing of a complaint or petition, the proceeding and all papers filed in it are public, except where expressly provided otherwise in this chapter or by law.

SECTION 31. 22.42 (1) of the Supreme Court Rules is amended to read:

22.42 **(1)** In any matter under investigation, the director or district ~~investigative~~ committee may require the attendance of lawyers, witnesses and the production of documentary evidence. A subpoena issued in connection with a confidential investigation must so indicate on its face. It is not a breach of confidentiality for a person subpoenaed to consult with an attorney.

SECTION 32. 31.10 (2) of the Supreme Court Rules is amended to read:

31.10 **(2)** If the board believes that a false report has been filed, the board may refer the matter to the ~~board of attorneys professional responsibility~~ office of lawyer regulation.

SECTION 33. 60.01 (1) of the Supreme Court Rules is amended to read:

60.01 **(1)** "Appropriate authority" means the chief judge of an offending judge's district, the director of state courts, the judicial commission, and the ~~board of attorneys professional responsibility~~ office of lawyer regulation.

SECTION 34. 62.01 of the Supreme Court Rules is amended to read:

62.01 Scope. The uniform standards of courtroom courtesy and decorum in SCR 62.02, adopted to enhance the administration of justice by promoting good manners and civility among all who participate in the administration of justice in Wisconsin, are applicable to judges, court commissioners, lawyers, court personnel, and the public in all Wisconsin courts. Notwithstanding SCR 20:8.4 (f), the standards under SCR 62.02 are not enforceable by the ~~board of attorneys professional responsibility~~ office of lawyer regulation. Conduct by a lawyer that violates chapter 20 of the supreme court rules or SCR 40.15 is subject to the authority of the ~~board of attorneys professional responsibility~~ office of lawyer regulation.

IT IS ORDERED that notice of this amendment of these Supreme Court Rules be given by a single publication of a copy of this order in the official state newspaper and in an official publication of the State Bar of Wisconsin.

Dated at Madison, Wisconsin, this 14th day of November, 2001.

BY THE COURT:

Cornelia G. Clark
Clerk of Supreme Court