

SUPPORTING MEMORANDUM In the
Matter of the Petition For
Establishment of Standards
And Procedures for Permanent
Revocation

TO: Chief Justice Shirley S. Abrahamson
Justice Ann Walsh Bradley
Justice N. Patrick Crooks
Justice David T. Prosser, Jr.
Justice Patience D. Roggensack
Justice Annette Kingsland Ziegler
Justice Michael J. Gableman

Filed with the Clerk of Court David Schanker
Clerk of Supreme Court
110 E. Main Street
Suite 215
Madison, WI 53703

The Board of Administrative Oversight and Preliminary Review Committee provide the following memorandum in support of the petition to establish standards and procedures for permanent revocation.

The petition seeks amendment to three Supreme Court Rules to establish standards and procedures for permanent revocation of lawyer licenses in cases where the seriousness of the lawyer's misconduct and significance of the public interest require.

As indicated in Appendix A, petitioner requests the addition of language to three rules: SCR 21.16 [new provision identified for subparagraph (1m)(a)]; SCR 22.19 [additional provision in subparagraph (1)]; and SCR 22.29 [new subparagraph (2m)].

The proposed amendment to SCR 21.16 would establish permanent revocation of a lawyer's license as a potential sanction in a disciplinary case. Petitioner envisions that the sanction would be reserved for cases involving exceptionally egregious misconduct and harm. Petitioner believes the kinds of misconduct that would justify permanent revocation are categorized in the proposed amendment. The common denominators measuring the categories of misconduct warranting permanent revocation are their harm to the client, the effect on the erosion or loss of confidence by the public in the legal profession and lawyer disciplinary system, and their effect on undermining the primacy and authority of the rules of professional conduct for attorneys. Petitioner believes that in these most serious cases, the public interest requires a permanent loss of license.

Amendment of SCR 22.19 would make it clear, when a lawyer submits a petition for voluntary revocation, whether

the revocation sought is with or without right of reinstatement.

Amendment of SCR 22.29 would make it clear that a lawyer revoked without right of reinstatement may not seek reinstatement.

The effect of the proposed rule amendments is to provide the Court the ability to impose a permanent revocation in an appropriate case. In those cases where the Court imposed permanent revocation, the lawyer could no longer regain a Wisconsin law license.

A 2004 survey by the Arizona State Bar and a 2009 survey by the Office of Lawyer Regulation (OLR) Director indicate that about ten jurisdictions have permanent disbarment either by rule or case law. The jurisdictions responding to the OLR Director were Arizona, Indiana, Kansas, Kentucky, Louisiana, Maine, Mississippi, New Jersey, Ohio, and Oregon. This petition is modeled after the Louisiana rule.

Petitioners do not know of any substantial fiscal or administrative impacts caused by the adoption of the proposed rule amendments.

Petitioners do not believe there are any related petitions pending before the Court.

Petitioners have consulted the State Bar Ethics Committee, and the State Bar Board of Governors prior to submitting the petition.

Respectfully submitted this ____ day of _____, 2010.

Steven J. Koszarek
Chairperson
Board of Administrative
Oversight

Edward A. Hannan
Chairperson
Preliminary Review Committee
State Bar No. 1015671