

SUPPORTING MEMORANDUM

In the Matter of Amendment of
Supreme Court Rule 21.06 and
Related Rules Regarding the
Lawyer Regulation System's
District Committees

FILED

DEC 23 2024

CLERK OF SUPREME COURT
OF WISCONSIN**INTRODUCTION**

The Board of Administrative Oversight, by its Chairperson, Denis Donohoe, and a Subcommittee comprised of Attorneys Rene L'Esperance and William Richard Jones and Hon. Michael D. Rust, files this memorandum in support of its petition to repeal Supreme Court Rule 21.06 and two other Rules enabling District Committees (21.01(1)(b) & 22.04) and amend 13 other Rules regarding the Lawyer Regulation System and its procedures relating to District Committees (21.03(6)(k), 21.03(7), 21.11(2), 21.12, 21.13(3), 21.14(1)(c), 21.14(2), 21.19, 21.21, 22.001(6), 22.25, 22.40, & 22.42).

The subject matter of the proposed rule changes falls within the responsibility of the Board of Administrative Oversight (BAO) to "monitor the fairness, productivity, effectiveness, and efficiency of the attorney regulation system," and "propose for consideration by the supreme court substantive and procedural rules related to the regulation of

lawyers." SCR 21.10(2)(a) & (f). BAO has previously petitioned this Court regarding District Committees.¹

The subject matter of the proposed rule changes also falls within the power of the Wisconsin Supreme Court to regulate the practice of law pursuant to its constitutional responsibility to exercise superintending and administrative authority over the courts. The recommended procedural changes do not abridge the substantive rights of any participant in the attorney disciplinary process. This Court has previously amended SCR 21.06, 21.11, and 22.04.

The proposed changes reflect the need for all professional misconduct and medical incapacity investigations to be performed by professional staff, which would promote consistent and timely resolutions.

I. Background.

When the Court created the Lawyer Regulation System (LRS) in 2000,² it included "district investigative committees" comprised of Court-appointed lawyers and

¹ See Rule Petition 04-10, *In the Matter of the Petition For Amendment to Supreme Court Rules Relating to District Committees In the Lawyer Regulation System* (Nov. 2, 2004); Rule Petition No. 19-08, *In the Matter of Amending Supreme Court Rules 22.02(2)(d), 22.25(3) and (4)(intro), and 22.26, Repealing Supreme Court Rules 21.01(1)(b) and 21.06, Repealing and Recreating Supreme Court Rule 22.03(4), and Creating Supreme Court Rules 21.01(1)(bg), 22.02(6)(d), and 22.25(3m)* (Mar. 13, 2019).

² *In the Matter of the Amendment of Supreme Court Rules: SCR Chapter 12 -- Clients' Security Fund; SCR Chapter 21 Enforcement of Attorneys Professional Responsibility; SCR Chapter 22 -- Procedures for the Board of Attorneys Professional Responsibility*, 2000 WI 106 (Sept. 25, 2000) at 8-9.

nonlawyers in each of the 16 state bar districts.³ The rule establishing district committees, SCR 21.06, enumerated six duties:

1. Educating the bar and public "about the high ideals of the legal profession and the practice of law consistent with the rules of professional conduct;"
2. Referring "promptly" to the Office of Lawyer Regulation (OLR) "any possible misconduct or medical incapacity of an attorney that comes to its attention;"
3. Assisting OLR in investigating "possible misconduct or medical incapacity of an attorney upon referral;"
4. Recommending the "disposition of any matter the committee has investigated;"
5. Assisting OLR in monitoring an "attorney's participation in an alternatives to discipline program or compliance with conditions imposed on the attorney's practice of law;" and
6. Resolving or assisting OLR in resolving "a dispute between an attorney and a client or other attorney if the dispute does not involve misconduct or medical

³ *Id.* at 8-9.

incapacity and the complaining person agrees to the procedure."⁴

When it created the LRS, this Court ordered BAO to, within three years, "conduct a review of the function and operation of the district investigative committees" and "file a written report with the court recommending whether the district investigative committees should be retained and, if the recommendation is affirmative, proposing amendments, if any, to the rules to improve their operation."⁵

Pursuant to this Order, on November 2, 2004, BAO filed Rule Petition 04-10, which "unanimously recommend[ed] retention of District Committees" and proposed several minor amendments to SCR 21.06, 21.11, and 22.04.⁶

At that time, the Board believed that District Committees "serve[d] a unique role as ambassadors of [OLR], the legal profession and the public."⁷ This is because District Committees "appl[ied] their local experience and knowledge" and "judgment from public and professional perspectives" to allegations of professional misconduct, which "promote[d] public confidence in the integrity of the

⁴ SCR 21.06(3).

⁵ 2000 WI 106, at 47-48.

⁶ The petition also sought minor amendments to SCR 21.07, 21.10, and 22.25 that are not directly relevant to District Committees; Rule Petition 04-10, Appx. ("Report to the Wisconsin Supreme Court on the Function and Operation of District Committees by the Board of Administrative Oversight of the Lawyer Regulation System"), at 2 (Mar. 22, 2004).

⁷ *Id.*

[LRS] ... by integrating peer review (which is accepted by members of the profession) and local perspective[s].”⁸ The Board concluded that “the [LRS] system is more credible when grievants and respondents are actively involved in the process,” and “[a]bolishing District Committees would eliminate a major source of statewide public participation in the [LRS].”⁹

This Court granted Rule Petition 04-10 without comment on May 5, 2005.¹⁰

In 2016, this Court established a Committee, chaired by Hon. Gerald P. Ptacek, to review OLR and LRS procedures, including those associated with District Committees.¹¹

In Rule Petition 19-08, filed on May 13, 2019, the Ptacek Committee “propose[d] that the Court eliminate District Committees.”¹² Before filing the petition, a process subcommittee consulted numerous stakeholders who generally opined “that the District Committees are valued but not called upon often enough to justify their continuation.”¹³ This was

⁸ *Id.*

⁹ *Id.*

¹⁰ See *In the matter of the Petition for Amendment to Supreme Court Rules relating to District Committees in the Lawyer Regulation System*, 2005 WI 56 (May 5, 2005).

¹¹ Neither OLR Director Keith Sellen nor other OLR staff were members of the OLR Committee. However, OLR participated in some subcommittees as ad hoc members.

¹² See Rule Petition No. 19-08, *In the Matter of Amending Supreme Court Rules 22.02(2)(d), 22.25(3) and (4)(intro), and 22.26, Repealing Supreme Court Rules 21.01(1)(b) and 21.06, Repealing and Recreating Supreme Court Rule 22.03(4), and Creating Supreme Court Rules 21.01(1)(bg), 22.02(6)(d), and 22.25(3m)*, at 2.

¹³ *Id.*

because "the work performed by District Committee may be redundant and the [OLR] Director has available resources that fulfill the role historically assumed by the District Committee."¹⁴ The petition also noted that "elimination of District Committees will reduce the number of cases that are referred to special preliminary review panels."¹⁵ It concluded that "parties to the disciplinary process will not be affected if the District Committees are eliminated."¹⁶

The Board of Governors of the State Bar of Wisconsin opposed the petition, citing a lack of local input:

The elimination of the use of District Committees ... creates an inappropriate scenario of all grievances being reviewed and considered by staff at OLR without consideration of or acknowledgement of local procedures and local expectations regarding the representation being provided by the attorney who is the subject of the grievance. The proposal, in effect, centralizes all attorney discipline matters around the standards of expectation identified by OLR Investigative Staff without recognition of the local environment and the expectations that are reasonable and appropriate based upon the location and the community in which the attorney is located.¹⁷

The Ptacek Committee replied, citing data comparing the high number of District Committee members (152 lawyers, 93 public members) to the sparse number of referred allegations (17 over five years) before concluding that "the reality is

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See Board of Governors of the State Bar of Wisconsin, letter (9/11/19) regarding comments to Rule Petition 19-08, available at <https://www.wicourts.gov/supreme/docs/1908commentssbw.pdf>, last checked 9/19/24.

that many of the individuals involved in the [District] Committees spend little time actually investigating complaints."¹⁸

This Court conducted a public hearing on October 29, 2019.¹⁹ It granted, in part, Rule Petition 19-08, but held in abeyance sections one and three pertaining to elimination of District Committees.²⁰

After further consideration, this Court granted, in part, Rule Petition 19-08, but denied without comment the Petition to the extent it sought to repeal District Committees.²¹ Chief Justice Roggensack (joined by Justices Ziegler and Hagedorn) dissented to the Order regarding District Committees²² for three reasons: First, "OLR currently uses professionals to do grievance investigations, creating a more even approach to investigations throughout the state," which had "significantly reduced the time required to

¹⁸ See OLR Review Committee, letter (9/30/19) responding to Board of Governors, at 3, available at <https://www.wicourts.gov/supreme/docs/1908petrespcomment.pdf>, last checked 9/9/24. The report showed OLR had not referred an allegation to a District Committee for investigation since 2018.

¹⁹ See *In the Matter for an Order Amending Supreme Court Rules 22.02(2)(d), 22.25(3) and (4)(intro), and 22.26, Repealing Supreme Court Rules 21.01(1)(b) and 21.06, Repealing and Recreating Supreme Court Rule 22.03(4), and Creating Supreme Court Rules 21.01(1)(bg), 22.02(6)(d), and 22.25(3m) (OLR Process)*, No. 19-08, at 1 (Dec. 18, 2019).

²⁰ *Id.* at 2-3.

²¹ See *In the Matter of Amending Supreme Court Rules Pertaining to Attorney Disciplinary Proceedings in Regard to Supreme Court Rules, chapters 10, 20, 21, 22, and 31 (OLR Procedure Review Committee)*, 2020 WI 62 (June 30, 2020).

²² *Id.*

complete investigations.”²³ Second, structural changes to the LRS created additional opportunities for local oversight of OLR and involvement in its processes.²⁴ Third, Chief Justice Roggensack “opposed ... the court requesting volunteers for District Committees that [it was] not using due to the court's prior changes to the OLR's structure.”²⁵

II. Discussion

This Petition proposes that the Court amend the SCRs to eliminate District Committees. BAO voted, unanimously, at its September 6, 2024 and December 6, 2024 meetings to file this petition to eliminate District Committees.²⁶

BAO has general oversight responsibilities for the LRS, including OLR, Preliminary Review Committee (PRC), District Committees, and others.²⁷ There are at least four reasons BAO believes this Court should amend the SCRs to repeal District Committees.

First, dispassionate and professional investigators should investigate allegations of professional misconduct. This is consistent with the national trend where, for the past fifty years, lawyer disciplinary agencies have

²³ *Id.* at ¶ 5.

²⁴ *Id.* at ¶¶ 7-8.

²⁵ *Id.* at ¶¶ 9-10.

²⁶ BAO created a subcommittee to draft and file this Petition. The subcommittee consists of Attorneys Rene L'Esperance and William Richard Jones, and Hon. Michael D. Rust.

²⁷ See SCR 21.10(3). LRS components are defined in SCR 21.01(1).

gravitated away from volunteer investigators and towards central intake programs where misconduct and medical incapacity allegations are investigated uniformly by trained professionals, which leads to more timely, consistent results.²⁸ In Wisconsin, grievances are promptly addressed by OLR's trained professionals, and technological advances have made it easier and more uniform for any person to file a grievance directly with OLR rather than through District Committees.

Second, OLR continues to have adequate resources to promptly evaluate and investigate allegations with its in-house staff:²⁹ although the volume of OLR grievances has steadily increased, its processing times have significantly decreased.³⁰ The simple fact is that, OLR has not referred an allegation to a District Committee for investigation in at least six years.³¹ Neither BAO nor OLR have record of a District Committee having referred an allegation to OLR for

²⁸ As long ago as 1970, the American Bar Association began to recommend centralized, professional investigation of allegations of attorney misconduct. *See, e.g., See Special Comm. on Evaluation of Disciplinary Enforcement, Am. Bar Ass'n, Problems and Recommendations in Disciplinary Enforcement*, 5-6, 24 (June 1970).

²⁹ The Ptacek Committee concluded in 2019 that OLR had enough "available resources that fulfill the role historically assumed by the District Committee." Rule Petition 19-08, at 2. Five years of additional data suggest OLR continues to have staffing that is sufficient to promptly evaluate and investigate grievances without requiring assistance from District Committees.

³⁰ Inquiries and grievances have increased by more than 20% between FY21-22 (1436) and FY23-24 (1729). But OLR processing times have decreased: the average time for intake evaluation was significantly less in FY23-24 (67 days) than FY21-22 (101 days).

³¹ A duty of District Committees is "[t]o assist in the investigation of possible misconduct or medical incapacity of an attorney upon referral by the [OLR] director." SCR 21.06(3)(c).

investigation in many years.³² District Committees are effectively dormant.

Third, the LRS presents adequate opportunities for local input by lawyers and public members. BAO, for example, includes volunteer members from different geographic regions of the state who monitor and provide oversight of OLR with regular reporting to this Court. BAO members include lawyers from various sized firms and different areas of practice. PRC performs a gatekeeping function - before filing public disciplinary complaints, OLR must first obtain cause to proceed from PRC - and provides other opportunities for local input. And community involvement also exists on the Special Preliminary Review Panel and for Special Investigators.³³ Additionally, there has been no need for local assistance as evidenced by a lack of referrals to or from District Committees.

Regardless, OLR has the ability to retain local expertise, and a Respondent may raise a local issue if warranted under the circumstances when responding to an alleged Rule violation. For example, allegations regarding the reasonableness of fees may be affected by local custom and practice. In such cases, OLR or a Respondent - or both -

³² A duty of District Committees is “[t]o refer promptly to the director any possible misconduct or medical incapacity of an attorney that comes to its attention. SCR 21.06(3)(b).

³³ See SCR 22.25.

may obtain community-based input to inform an investigation. If OLR obtains cause to proceed from the PRC and files a Complaint, the presiding Supreme Court-appointed Referee³⁴ may also consider local input, if relevant, as part of the proceeding.

Fourth, the remaining duties of District Committees are being fulfilled by OLR. For instance, OLR has been conducting outreach and educating the bar and public in all areas of Wisconsin. Also, OLR has increased its use of alternative dispute resolution through its diversion agreements. District Committees have not, in recent years, performed these functions.

CONCLUSION

BAO appreciates the willingness of District Committee members to serve within the LRS. However, the decline in function of the District Committees to the point of being functionally dormant and OLR's professionally trained staff have fulfilled the duties of the District Committee in a timely and consistent manner making it clear that that the District Committees are no longer necessary.

³⁴ See SCR 21.08.

BAO respectfully requests the Court grant its petition to amend the Supreme Court Rules regarding the Lawyer Regulation System to eliminate District Committees.

Respectfully submitted this 23rd day of December, 2024 MONTH, YEAR.

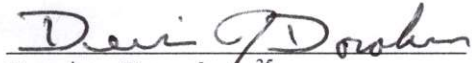
Denis Donohoe³⁵
Chairperson, Board of Administrative Oversight

William Jones 12/16/24
Attorney NAME
Member, Board of Administrative Oversight
State Bar No. 1035897

³⁵ Mr. Donohoe is a public member of BAO and its Chairperson.

BAO respectfully requests the Court grant its petition to amend the Supreme Court Rules regarding the Lawyer Regulation System to eliminate District Committees.

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Denis Donohoe³⁵
Chairperson, Board of Administrative Oversight

Attorney NAME
Member, Board of Administrative Oversight
State Bar No.

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APPENDIX 1

1 **SCR 21.06 District committees.**

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

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

10 ~~(3) The duties of a district committee are:~~

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

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

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

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

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

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

28 ~~(4) Each district committee shall hold regularly scheduled meetings as~~
29 ~~needed to complete its work timely. Meetings also may be held at the call of the~~
30 ~~chairperson. At the first meeting held each calendar year, the committee shall elect~~
31 ~~a chairperson and a vice chairperson to act in the absence of the chairperson. A~~
32 ~~majority of members constitutes a quorum, except that the chairperson may~~
33 ~~designate a subcommittee of one or more members to conduct a preliminary~~
34 ~~investigation or investigative meeting and prepare a report and recommendation~~
35 ~~for consideration and action by the committee. A subcommittee also may be~~

APPENDIX 1

36 ~~designated to monitor an attorney's participation in a diversion from discipline~~
37 ~~program or compliance with conditions imposed on the attorney's practice of law.~~

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

APPENDIX 1A

1 **SCR 21.06** (repealed)

APPENDIX 2

1 **SCR 21.01 Components.**

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

3 (a) Office of lawyer regulation, provided in SCR 21.02.

4 ~~(b) District committees, provided in SCR 21.06.~~

5 (bg) Special investigators and the special preliminary review panel, provided
6 in SCR 22.25.

7 (c) Preliminary review committee, provided in SCR 21.07.

8 (d) Referees, provided in SCR 21.08.

9 (e) Board of administrative oversight, provided in SCR 21.10.

10 (f) Supreme court.

APPENDIX 2

1 **SCR 21.01 Components.**

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

3 (a) Office of lawyer regulation, provided in SCR 21.02.

4 (b) Special investigators and the special preliminary review panel,
5 provided in SCR 22.25.

6 (c) Preliminary review committee, provided in SCR 21.07.

7 (d) Referees, provided in SCR 21.08.

8 (e) Board of administrative oversight, provided in SCR 21.10.

9 (f) Supreme court.

APPENDIX 3

30 (f) To divert a matter to an alternatives to discipline program as the director
31 may consider appropriate and to monitor the attorney's participation in the
32 program.

33 (g) To monitor an attorney's compliance with conditions 147 imposed on the
34 attorney's practice of law.

35 (h) To investigate petitions for license reinstatement and, at the request of
36 the board of bar examiners, to investigate the character and fitness of an applicant
37 for bar admission.

38 (j) To employ, with the approval of the director of state courts, staff to assist
39 in the performance of the director's duties.

40 ~~(k) To supervise the district committees.~~

41 (m) To prepare annually a budget for the operation of the office of lawyer
42 regulation and to submit it to the board of administrative oversight for review and
43 presentation, with comment, to the supreme court.

44 (n) To prepare annually a report of the activities of the office of lawyer
45 regulation during the preceding year and to submit it to the board of administrative
46 oversight for review and presentation, with comment, to the supreme court.

47 (o) To delegate the duties specified in this rule to staff as the director may
48 consider advisable.

49 (p) To perform other duties as may be assigned by the supreme court.

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

52 (8) The director may refer a matter involving a fee dispute to a state or local
53 bar association's fee arbitration committee for resolution.

54 (9) The director, with notice to the lawyer concerned, may refer a lawyer to
55 a state bar lawyer assistance program for any of the following reasons:

56 (a) The lawyer has agreed to enter an alternative to discipline program and
57 the director determines that a state bar lawyer assistance program would be the
58 appropriate entity to monitor conditions.

APPENDIX 3

59 (b) The lawyer is subject to conditions on the continued practice of law or
60 conditions on seeking license reinstatement and the director determines a state bar
61 lawyer assistance program would be the appropriate entity to monitor conditions.

62 (c) The lawyer has pleaded impairment or medical incapacity in response to
63 an investigation or a complaint.

64 (d) The lawyer has exhibited or engaged in other behavior that provides a
65 reasonable belief that the lawyer may be impaired or incapacitated.

APPENDIX 3

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

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

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

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

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

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

16 (6) The duties of the director are:

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

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

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

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

27 (e) To file with the supreme court and prosecute complaints alleging
28 attorney misconduct and petitions alleging attorney medical incapacity after a
29 preliminary review panel has determined there is cause to proceed in the matter.

APPENDIX 3

30 (f) To divert a matter to an alternatives to discipline program as the director
31 may consider appropriate and to monitor the attorney's participation in the
32 program.

33 (g) To monitor an attorney's compliance with conditions 147 imposed on the
34 attorney's practice of law.

35 (h) To investigate petitions for license reinstatement and, at the request of
36 the board of bar examiners, to investigate the character and fitness of an applicant
37 for bar admission.

38 (j) To employ, with the approval of the director of state courts, staff to assist
39 in the performance of the director's duties.

40 (m) To prepare annually a budget for the operation of the office of lawyer
41 regulation and to submit it to the board of administrative oversight for review and
42 presentation, with comment, to the supreme court.

43 (n) To prepare annually a report of the activities of the office of lawyer
44 regulation during the preceding year and to submit it to the board of administrative
45 oversight for review and presentation, with comment, to the supreme court.

46 (o) To delegate the duties specified in this rule to staff as the director may
47 consider advisable.

48 (p) To perform other duties as may be assigned by the supreme court.

49 (8) The director may refer a matter involving a fee dispute to a state or local
50 bar association's fee arbitration committee for resolution.

51 (9) The director, with notice to the lawyer concerned, may refer a lawyer to
52 a state bar lawyer assistance program for any of the following reasons:

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54 the director determines that a state bar lawyer assistance program would be the
55 appropriate entity to monitor conditions.

56 (b) The lawyer is subject to conditions on the continued practice of law or
57 conditions on seeking license reinstatement and the director determines a state bar
58 lawyer assistance program would be the appropriate entity to monitor conditions.

APPENDIX 3

59 (c) The lawyer has pleaded impairment or medical incapacity in response to
60 an investigation or a complaint.

61 (d) The lawyer has exhibited or engaged in other behavior that provides a
62 reasonable belief that the lawyer may be impaired or incapacitated.

APPENDIX 1

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7 ~~serve staggered 3-year terms. A member may serve not more than 3 consecutive 3-~~
8 ~~year terms.~~

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

10 (3) ~~The duties of a district committee are:~~

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

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18 (d) ~~To make a recommendation to the director as it may consider appropriate~~
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28 (4) ~~Each district committee shall hold regularly scheduled meetings as~~
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39 ~~disciplinary matters are closed. The portions of the meetings relating to other~~
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APPENDIX 4

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

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

4 ~~—— (2) The director shall provide formal training in procedural and 154~~
5 ~~substantive ethics rules to the members of the district committees. Committee~~
6 ~~members shall attend at least one training session within the first year of~~
7 ~~appointment as a condition of appointment, unless the director extends the time to~~
8 ~~fulfill the training requirement.~~

9 (32) The director and current members of the preliminary review committee
10 shall provide formal training to new members of the preliminary review
11 committee.

12 (43) Formal training to the referees shall be provided as set forth in SCR
13 21.08.

14 (54) The director and current members of the board of administrative
15 oversight shall provide formal training to the new members of the board of
16 administrative oversight.

17 (64) The training provided in (1) through (23) and (34) shall emphasize the
18 role and the importance of the contributions of public member participants in the
19 lawyer regulation system.

APPENDIX 4A

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

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

4 (2) The director and current members of the preliminary review committee
5 shall provide formal training to new members of the preliminary review
6 committee.

7 (3) Formal training to the referees shall be provided as set forth in SCR
8 21.08.

9 (4) The director and current members of the board of administrative
10 oversight shall provide formal training to the new members of the board of
11 administrative oversight.

12 (5) The training provided in (1) through (2) and (4) shall emphasize the role
13 and the importance of the contributions of public member participants in the
14 lawyer regulation system.

APPENDIX 5

1 **SCR 21.12 Roles of office of lawyer regulation and, grievant, ~~and~~**
2 **~~district committees.~~**

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

APPENDIX 5A

1 **SCR 21.12 Roles of office of lawyer regulation and grievant.**

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

APPENDIX 6

1 **SCR 21.13 Official duties.**

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

5 (1) The director and staff of the office of lawyer regulation.

6 (2) Retained counsel.

7 ~~(3) Members of district committees.~~

8 (43) Special investigators.

9 (54) Members of the preliminary review committee. 155

10 (65) Members of a special preliminary review panel.

11 (76) Referees.

12 (87) Members of the board of administrative oversight.

13 (98) Attorneys designated by the director to monitor compliance with
14 diversion agreements or with conditions imposed by the supreme court in
15 misconduct and medical incapacity proceedings, or to investigate or conduct a
16 hearing in a reinstatement proceeding.

APPENDIX 6A

1 **SCR 21.13 Official duties.**

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

5 (1) The director and staff of the office of lawyer regulation.

6 (2) Retained counsel.

7 (3) Special investigators.

8 (4) Members of the preliminary review committee.

9 (5) Members of a special preliminary review panel.

10 (6) Referees.

11 (7) Members of the board of administrative oversight.

12 (8) Attorneys designated by the director to monitor compliance with
13 diversion agreements or with conditions imposed by the supreme court in
14 misconduct and medical incapacity proceedings, or to investigate or conduct a
15 hearing in a reinstatement proceeding.

APPENDIX 7

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

2 (1) The following may not take part in a matter in which they are a
3 complaining person, grievant, or respondent or in which their own interests outside
4 of their official duties under SCR chs. 21 and 22 reasonably may be perceived to
5 impair their impartiality or when a judge similarly situated would be disqualified
6 under s. 757.19, 1997 stats. or recusal would be required under SCR 60.04(4):

7 (a) The director and staff of the office of lawyer regulation.

8 (b) Retained counsel.

9 ~~(c) Members of district committees.~~

10 ~~(d) Special investigators.~~

11 (ed) Members of the preliminary review committee.

12 (fe) Members of a special preliminary review panel.

13 (gf) Referees.

14 (hg) Attorneys designated by the director to monitor an attorney's
15 participation in a diversion from discipline program or compliance with conditions
16 imposed on the attorney's practice of law.

17 (ih) Members of the board of administrative oversight.

APPENDIX 7A

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

2 (1) The following may not take part in a matter in which they are a
3 complaining person, grievant, or respondent or in which their own interests outside
4 of their official duties under SCR chs. 21 and 22 reasonably may be perceived to
5 impair their impartiality or when a judge similarly situated would be disqualified
6 under s. 757.19, 1997 stats. or recusal would be required under SCR 60.04(4):

7 (a) The director and staff of the office of lawyer regulation.

8 (b) Retained counsel.

9 (c) Special investigators.

10 (d) Members of the preliminary review committee.

11 (e) Members of a special preliminary review panel.

12 (f) Referees.

13 (g) Attorneys designated by the director to monitor an attorney's
14 participation in a diversion from discipline program or compliance with conditions
15 imposed on the attorney's practice of law.

16 (h) Members of the board of administrative oversight.

APPENDIX 8

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

2 (2) Allegations of misconduct or malfeasance against the director, staff of
3 the office of lawyer regulation, retained counsel, ~~a member of a district committee,~~
4 a special investigator, a member of the preliminary review committee, a member of
5 a special preliminary review panel, a referee, an attorney designated by the director
6 to monitor an attorney's participation in a diversion from discipline program or
7 compliance with conditions imposed on the attorney's practice of law, or a member
8 of the board of administrative oversight shall be governed by the procedures under
9 SCR 22.25.

APPENDIX 8

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

2 (2) Allegations of misconduct or malfeasance against the director, staff of
3 the office of lawyer regulation, retained counsel, a special investigator, a member
4 of the preliminary review committee, a member of a special preliminary review
5 panel, a referee, an attorney designated by the director to monitor an attorney's
6 participation in a diversion from discipline program or compliance with conditions
7 imposed on the attorney's practice of law, or a member of the board of
8 administrative oversight shall be governed by the procedures under SCR 22.25.

APPENDIX 10

1 **SCR 21.19 Privileges, immunity.**

2 Communications with the director, staff of the office of lawyer regulation, a
3 ~~district committee~~, a special investigator, retained counsel, the preliminary review
4 committee, and a special preliminary review panel alleging attorney misconduct or
5 medical incapacity and testimony given in an investigation or proceeding under
6 SCR ch. 22 are privileged, except as provided under SCRs 22.03, 22.21, 22.34 and
7 22.40. No lawsuit predicated on any privileged or non-privileged communications
8 referenced in this section may be instituted against any grievant or witness. The
9 director, staff of the office of lawyer regulation, ~~members of a district committee~~,
10 special investigators, retained counsel, members of the preliminary review
11 committee, members of a special preliminary review panel, referees, members of
12 the board of administrative oversight, and persons designated by the director to
13 monitor compliance with diversion agreements or with conditions imposed on the
14 attorney's practice of law, shall be immune from suit for any conduct in the course
15 of their official duties.

APPENDIX 10A

1 **SCR 21.19 Privileges, immunity.**

2 Communications with the director, staff of the office of lawyer regulation, a
3 special investigator, retained counsel, the preliminary review committee, and a
4 special preliminary review panel alleging attorney misconduct or medical
5 incapacity and testimony given in an investigation or proceeding under SCR ch. 22
6 are privileged, except as provided under SCRs 22.03, 22.21, 22.34 and 22.40. No
7 lawsuit predicated on any privileged or non-privileged communications referenced
8 in this section may be instituted against any grievant or witness. The director, staff
9 of the office of lawyer regulation, special investigators, retained counsel, members
10 of the preliminary review committee, members of a special preliminary review
11 panel, referees, members of the board of administrative oversight, and persons
12 designated by the director to monitor compliance with diversion agreements or
13 with conditions imposed on the attorney's practice of law, shall be immune from
14 suit for any conduct in the course of their official duties.

APPENDIX 11

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

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

APPENDIX 11A

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

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

APPENDIX 12A

1 **SCR 22.001 Definitions.**

2 In SCR chapter 21 and this chapter:

3 (1) "Attorney" means a person admitted to the practice of law in this state
4 and a person admitted to practice in another jurisdiction who appears before a court
5 or administrative agency in this state or engages in any other activity in this state
6 that constitutes the practice of law.

7 (2) "Cause to proceed" means a reasonable belief based on a review of an
8 investigative report that an attorney has engaged in misconduct that warrants
9 discipline or has a medical incapacity that may be proved by clear, satisfactory and
10 convincing evidence.

11 (3) "Costs" means the compensation and necessary expenses of referees, fees
12 and expenses of counsel for the office of lawyer regulation, a reasonable
13 disbursement for the service of process or other papers, amounts actually paid out
14 for certified copies of records in any public office, postage, telephoning, adverse
15 examinations and depositions and copies, expert witness fees, witness fees and
16 expenses, compensation and reasonable expenses of experts and investigators
17 employed on a contractual basis, and any other costs and fees authorized by
18 chapter 814 of the statutes.

19 (4) "Director" means the director of the office of lawyer regulation provided
20 in SCR 21.03.

21 (5) "Grievance" means an allegation of possible attorney misconduct or
22 medical incapacity received by the office of lawyer regulation.

23 (6) "Grievant" means the person who presents a grievance, except that a
24 judicial officer who communicates a matter to the office of lawyer regulation in the
25 course of official duties is not a grievant.

APPENDIX 13

1 **SCR 22.04 Referral to district committee.**

2 ~~—— (1) The director may refer a matter to a district committee for assistance in~~
3 ~~the investigation. A respondent has the duty to cooperate specified in SCR~~
4 ~~21.15(4) and 22.03(2) in respect to the district committee. The committee may~~
5 ~~subpoena and compel the production of documents specified in SCR 22.03(8) and~~
6 ~~22.42.~~

7 ~~—— (2) When the director refers a matter to a committee, the respondent may~~
8 ~~make a written request for the substitution of the investigator assigned to the matter~~
9 ~~by the committee chairperson, or 164 may provide a written waiver of the right to~~
10 ~~request substitution. The request for substitution shall be made within 14 days after~~
11 ~~receipt of notice of the assignment of the investigator. One timely request for~~
12 ~~substitution shall be granted as a matter of right. Additional requests for~~
13 ~~substitution shall be granted by the committee chairperson for good cause. When a~~
14 ~~request for substitution is granted, the investigator initially assigned shall not~~
15 ~~participate further in the matter.~~

16 ~~—— (3) The district committee shall conduct an investigation and file an~~
17 ~~investigative report with the director within 90 days after the date the respondent's~~
18 ~~right to request substitution of the investigator assigned to the matter under sub. (2)~~
19 ~~as a matter of right terminates or has been waived. The committee chairperson,~~
20 ~~with notice to the grievant and respondent, may request an extension of time to~~
21 ~~complete the investigative report from the director. The committee chairperson~~
22 ~~shall set forth the reasons for the request and the date by which a report will be~~
23 ~~filed in a written request for the extension. The director may approve or deny the~~
24 ~~request, in the director's discretion. The investigative report shall outline the~~
25 ~~relevant factual allegations and identify possible misconduct, if any, and may make~~
26 ~~a recommendation as to the disposition of the matter. The district committee shall~~
27 ~~include in reports to the director all relevant exculpatory and inculpatory~~
28 ~~information obtained.~~

29 ~~—— (4) The director shall send a copy of the investigative report of the~~
30 ~~committee to the respondent and to the grievant. The respondent and the grievant~~
31 ~~each may submit a written response to the investigative report within 10 days after~~
32 ~~the date the report is sent to them.~~

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33 ~~—— (5) The director may withdraw the referral of a matter to a committee at any~~
34 ~~time, and the committee thereupon shall terminate its investigation.~~

APPENDIX 13A

1 **SCR 22.04** (repealed)

APPENDIX 14

1 **SCR 22.25 Misconduct and malfeasance allegations against lawyer** 2 **regulation system participants.**

3 (1) Allegations of misconduct against the director, a lawyer member of staff,
4 retained counsel, ~~a lawyer member of a district committee~~, a lawyer member of the
5 preliminary review committee, a lawyer member of the board of administrative
6 oversight, or a referee shall be assigned by the director for investigation to a
7 special investigator. The supreme court shall appoint lawyers who are not currently
8 participating in the lawyer regulation system and are not among the lawyers from
9 whom retained counsel is selected under SCR 21.05 to serve as special
10 investigators. The director shall assign a special investigator in rotation. A special
11 investigator may discuss confidential matters with other special investigators. All
12 records of matters referred to a special investigator or to the special preliminary
13 review panel shall be retained by the director as required under SCR 22.44 and
14 22.45.

15 (2) Within 14 days after notice of assignment of a matter to a special
16 investigator, the respondent may make a written request for the substitution of the
17 special investigator. One timely request for substitution shall be granted by the
18 director as a matter of right. Additional requests for substitution shall be granted
19 for good cause. 184 When a request for substitution is granted, the special
20 investigator initially assigned shall not participate further in the matter.

21 (3) If the special investigator determines that there is not sufficient
22 information to support an allegation of possible misconduct, the special
23 investigator may close the matter. The special investigator shall notify the grievant
24 in writing that the grievant may obtain review by the special preliminary review
25 panel of the closure by submitting a written request to the special investigator. The
26 request for review must be received by the special investigator within 30 days after
27 the date of the letter notifying the grievant of the closure. The special investigator
28 shall send the request for review to the special preliminary review panel, as
29 described in sub (3m). A member may serve not more than 2 consecutive 3-year
30 terms. Upon a timely request by the grievant for additional time, the special
31 investigator shall report the request to the chairperson of the special preliminary
32 review panel, who may extend the time for submission of additional information
33 relating to the request for review. If the panel affirms the investigator's
34 determination, the special preliminary review panel shall inform the grievant. The

APPENDIX 14

35 panel's decision affirming closure of the matter is final. If the panel does not
36 concur in the investigator's determination, it shall direct the investigator to initiate
37 an investigation of the matter. (3m) The special preliminary review panel consists
38 of 4 lawyers and 3 public members, appointed by the supreme court and having a
39 quorum of 4 members. Members of the special preliminary review panel serve
40 staggered 3-year terms. A member may not serve more than 2 consecutive 3-year
41 terms.

42 (4) If the special investigator determines that the information provided is
43 sufficient to support an allegation of misconduct, the special investigator shall
44 conduct an investigation of the matter. Upon commencing an investigation, the
45 special investigator shall notify the respondent of the matter being investigated
46 unless in the opinion of the special investigator the investigation of the matter
47 requires otherwise. The respondent shall fully and fairly disclose all facts and
48 circumstances pertaining to the alleged misconduct with 20 days after being served
49 by ordinary mail a request for a written response. The special investigator may
50 allow additional time to respond. Except in limited circumstances when good cause
51 is shown and a response summary is more appropriate, the special investigator
52 shall provide the 185 grievant a copy of the respondent's response and the
53 opportunity to comment in writing on the respondent's response. Following receipt
54 of the response, the special investigator may conduct further investigation and may
55 compel the respondent to answer questions, furnish documents, and present
56 information deemed relevant to the investigation. In the course of the investigation,
57 the respondent's willful failure to provide relevant information, to answer questions
58 fully, or to furnish documents and the respondent's misrepresentation in a
59 disclosure are misconduct, regardless of the matters asserted in the grievance.
60 Upon completion of the investigation, the special investigator shall do one of the
61 following:

62 (a) The special investigator may dismiss the matter and notify the grievant in
63 writing that the grievant may obtain review of the dismissal by submitting to the
64 special investigator a written request. The request for review must be received
65 within 30 days after the date of the letter notifying the grievant of the dismissal.
66 The special investigator shall send the request for review to the special preliminary
67 review panel. Upon a timely request by the grievant for additional time, the special
68 investigator shall report the request to the chairperson of the special preliminary

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69 review panel, who may extend the time for submission of additional information
70 relating to the request for review. If the panel affirms the investigator's
71 determination, the special preliminary review panel shall inform the grievant. The
72 panel's decision affirming dismissal of the matter is final. If the panel does not
73 concur in the investigator's determination, the panel shall direct the investigator to
74 investigate the matter further.

75 (b) The special investigator may prepare an investigative report and send a
76 copy of it to the respondent and to the grievant. The respondent and grievant each
77 may submit to the special investigator a written response to the report within 10
78 days after the copy of the report is sent.

79 (5) The special investigator may submit the investigative report and the
80 response of the respondent and the grievant, if any, to the special preliminary
81 review panel to determine whether there is cause for the special investigator to
82 proceed in the matter. A determination of cause to proceed shall be by the
83 affirmative vote of four or more members of the panel and does not constitute a
84 determination that there is clear, satisfactory and convincing evidence of
85 misconduct.

86 (6)(a) If the special preliminary review panel determines that cause to
87 proceed in the matter has not been established, the special investigator may dismiss
88 the matter, which is a final decision, or the special investigator may continue the
89 investigation and resubmit the matter to the special preliminary review panel
90 within a reasonable time after the panel's determination.

91 (b) Following resubmission, if the special preliminary review panel
92 determines that the special investigator has failed to establish cause to proceed, it
93 shall dismiss the matter and notify in writing the special investigator, the
94 respondent, and the grievant of the dismissal. The panel's decision to dismiss after
95 resubmission is final and there is no further review.

96 (c) Repealed.

97 (7) If the special preliminary review panel determines that there is cause to
98 proceed in the matter, the special investigator may take any of the actions set forth
99 in SCR 22.08(2). The special investigator need not obtain approval of a diversion
100 agreement from the special preliminary review panel. In cases where the special
101 investigator files a complaint with the supreme court, the special investigator may

APPENDIX 14

102 prosecute the complaint personally or may assign responsibility for filing, serving,
103 and prosecuting the complaint to counsel retained by the director for such
104 purposes.

105 (8) Allegations of malfeasance against the director, retained counsel, a
106 ~~member of a district committee~~, a member of the preliminary review committee, a
107 member of the board of administrative oversight, a special investigator, a member
108 of the special preliminary review panel, or a referee shall be referred by the
109 director to the supreme court for appropriate action.

110 (9) Allegations of malfeasance against a member of the staff of the office of
111 lawyer regulation shall be referred to the director for appropriate personnel action.

APPENDIX 14A

1 **SCR 22.25 Misconduct and malfeasance allegations against lawyer** 2 **regulation system participants.**

3 (1) Allegations of misconduct against the director, a lawyer member of staff,
4 retained counsel, a lawyer member of the preliminary review committee, a lawyer
5 member of the board of administrative oversight, or a referee shall be assigned by
6 the director for investigation to a special investigator. The supreme court shall
7 appoint lawyers who are not currently participating in the lawyer regulation system
8 and are not among the lawyers from whom retained counsel is selected under SCR
9 21.05 to serve as special investigators. The director shall assign a special
10 investigator in rotation. A special investigator may discuss confidential matters
11 with other special investigators. All records of matters referred to a special
12 investigator or to the special preliminary review panel shall be retained by the
13 director as required under SCR 22.44 and 22.45.

14 (2) Within 14 days after notice of assignment of a matter to a special
15 investigator, the respondent may make a written request for the substitution of the
16 special investigator. One timely request for substitution shall be granted by the
17 director as a matter of right. Additional requests for substitution shall be granted
18 for good cause. 184 When a request for substitution is granted, the special
19 investigator initially assigned shall not participate further in the matter.

20 (3) If the special investigator determines that there is not sufficient
21 information to support an allegation of possible misconduct, the special
22 investigator may close the matter. The special investigator shall notify the grievant
23 in writing that the grievant may obtain review by the special preliminary review
24 panel of the closure by submitting a written request to the special investigator. The
25 request for review must be received by the special investigator within 30 days after
26 the date of the letter notifying the grievant of the closure. The special investigator
27 shall send the request for review to the special preliminary review panel, as
28 described in sub (3m). A member may serve not more than 2 consecutive 3-year
29 terms. Upon a timely request by the grievant for additional time, the special
30 investigator shall report the request to the chairperson of the special preliminary
31 review panel, who may extend the time for submission of additional information
32 relating to the request for review. If the panel affirms the investigator's
33 determination, the special preliminary review panel shall inform the grievant. The
34 panel's decision affirming closure of the matter is final. If the panel does not

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35 concur in the investigator's determination, it shall direct the investigator to initiate
36 an investigation of the matter. (3m) The special preliminary review panel consists
37 of 4 lawyers and 3 public members, appointed by the supreme court and having a
38 quorum of 4 members. Members of the special preliminary review panel serve
39 staggered 3-year terms. A member may not serve more than 2 consecutive 3-year
40 terms.

41 (4) If the special investigator determines that the information provided is
42 sufficient to support an allegation of misconduct, the special investigator shall
43 conduct an investigation of the matter. Upon commencing an investigation, the
44 special investigator shall notify the respondent of the matter being investigated
45 unless in the opinion of the special investigator the investigation of the matter
46 requires otherwise. The respondent shall fully and fairly disclose all facts and
47 circumstances pertaining to the alleged misconduct with 20 days after being served
48 by ordinary mail a request for a written response. The special investigator may
49 allow additional time to respond. Except in limited circumstances when good cause
50 is shown and a response summary is more appropriate, the special investigator
51 shall provide the 185 grievant a copy of the respondent's response and the
52 opportunity to comment in writing on the respondent's response. Following receipt
53 of the response, the special investigator may conduct further investigation and may
54 compel the respondent to answer questions, furnish documents, and present
55 information deemed relevant to the investigation. In the course of the investigation,
56 the respondent's willful failure to provide relevant information, to answer questions
57 fully, or to furnish documents and the respondent's misrepresentation in a
58 disclosure are misconduct, regardless of the matters asserted in the grievance.
59 Upon completion of the investigation, the special investigator shall do one of the
60 following:

61 (a) The special investigator may dismiss the matter and notify the grievant in
62 writing that the grievant may obtain review of the dismissal by submitting to the
63 special investigator a written request. The request for review must be received
64 within 30 days after the date of the letter notifying the grievant of the dismissal.
65 The special investigator shall send the request for review to the special preliminary
66 review panel. Upon a timely request by the grievant for additional time, the special
67 investigator shall report the request to the chairperson of the special preliminary
68 review panel, who may extend the time for submission of additional information

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69 relating to the request for review. If the panel affirms the investigator's
70 determination, the special preliminary review panel shall inform the grievant. The
71 panel's decision affirming dismissal of the matter is final. If the panel does not
72 concur in the investigator's determination, the panel shall direct the investigator to
73 investigate the matter further.

74 (b) The special investigator may prepare an investigative report and send a
75 copy of it to the respondent and to the grievant. The respondent and grievant each
76 may submit to the special investigator a written response to the report within 10
77 days after the copy of the report is sent.

78 (5) The special investigator may submit the investigative report and the
79 response of the respondent and the grievant, if any, to the special preliminary
80 review panel to determine whether there is cause for the special investigator to
81 proceed in the matter. A determination of cause to proceed shall be by the
82 affirmative vote of four or more members of the panel and does not constitute a
83 determination that there is clear, satisfactory and convincing evidence of
84 misconduct.

85 (6)(a) If the special preliminary review panel determines that cause to
86 proceed in the matter has not been established, the special investigator may dismiss
87 the matter, which is a final decision, or the special investigator may continue the
88 investigation and resubmit the matter to the special preliminary review panel
89 within a reasonable time after the panel's determination.

90 (b) Following resubmission, if the special preliminary review panel
91 determines that the special investigator has failed to establish cause to proceed, it
92 shall dismiss the matter and notify in writing the special investigator, the
93 respondent, and the grievant of the dismissal. The panel's decision to dismiss after
94 resubmission is final and there is no further review.

95 (c) Repealed.

96 (7) If the special preliminary review panel determines that there is cause to
97 proceed in the matter, the special investigator may take any of the actions set forth
98 in SCR 22.08(2). The special investigator need not obtain approval of a diversion
99 agreement from the special preliminary review panel. In cases where the special
100 investigator files a complaint with the supreme court, the special investigator may
101 prosecute the complaint personally or may assign responsibility for filing, serving,

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102 and prosecuting the complaint to counsel retained by the director for such
103 purposes.

104 (8) Allegations of malfeasance against the director, retained counsel, a
105 member of the preliminary review committee, a member of the board of
106 administrative oversight, a special investigator, a member of the special
107 preliminary review panel, or a referee shall be referred by the director to the
108 supreme court for appropriate action.

109 (9) Allegations of malfeasance against a member of the staff of the office of
110 lawyer regulation shall be referred to the director for appropriate personnel action.

APPENDIX 15

1 **SCR 22.40 Confidentiality.**

2 (1) Except as otherwise provided in this chapter, all papers, files, transcripts,
3 and communications relating to an allegation of attorney misconduct, an
4 investigation pursuant to SCR Chapters 10, 22, and 31, and monitoring compliance
5 with conditions, suspension, or revocation imposed by the supreme court, are to be
6 held in confidence by the director and staff of the office of lawyer regulation, ~~the~~
7 ~~members of the district committees,~~ special investigators, the members of the
8 special preliminary review panel, and the members of the preliminary review
9 committee. Following the filing of a complaint or petition, the proceeding and all
10 papers filed in it are public, except where expressly provided otherwise in this
11 chapter, by court order, or by law.

12 (2) The director may provide relevant information to the respondent, to the
13 grievant, to an appropriate authority for the appointment of judges, to other
14 attorney or judicial disciplinary agencies, to other jurisdictions investigating
15 qualifications for admission to practice, and to law enforcement agencies
16 investigating qualifications for government employment. The supreme court may
17 authorize the release of confidential information to other persons or agencies.

18 (3) The director may provide relevant information to a district attorney or
19 U.S. attorney where there is substantial evidence of an attorney's possible criminal
20 conduct.

21 (4) If there is publicity concerning the fact that an attorney is the subject of
22 an investigation or disciplinary or medical incapacity proceeding, the director may
23 issue an explanatory statement. If there is publicity concerning alleged misconduct
24 or medical incapacity of an attorney and it is determined that there is no basis for
25 further proceedings and there is no recommendation of discipline, the director may
26 issue an explanatory statement.

27 (5) In order to provide guidance to the bar, the director may provide the state
28 bar of Wisconsin a summary of facts and violations of the rules of professional
29 conduct for attorneys in a matter in which a private reprimand has been imposed.
30 The summary shall be published in an official publication of the state bar of
31 Wisconsin but may not disclose information identifying the attorney reprimanded.

32 (6) The director may provide relevant information to the supreme court
33 when seeking the temporary suspension of an attorney's license.

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34 (7) The director may provide relevant information to a state bar lawyer
35 assistance program when making a referral pursuant to SCR 21.03(9).

APPENDIX 15A

1 **SCR 22.40 Confidentiality.**

2 (1) Except as otherwise provided in this chapter, all papers, files, transcripts,
3 and communications relating to an allegation of attorney misconduct, an
4 investigation pursuant to SCR Chapters 10, 22, and 31, and monitoring compliance
5 with conditions, suspension, or revocation imposed by the supreme court, are to be
6 held in confidence by the director and staff of the office of lawyer regulation,
7 special investigators, the members of the special preliminary review panel, and the
8 members of the preliminary review committee. Following the filing of a complaint
9 or petition, the proceeding and all papers filed in it are public, except where
10 expressly provided otherwise in this chapter, by court order, or by law.

11 (2) The director may provide relevant information to the respondent, to the
12 grievant, to an appropriate authority for the appointment of judges, to other
13 attorney or judicial disciplinary agencies, to other jurisdictions investigating
14 qualifications for admission to practice, and to law enforcement agencies
15 investigating qualifications for government employment. The supreme court may
16 authorize the release of confidential information to other persons or agencies.

17 (3) The director may provide relevant information to a district attorney or
18 U.S. attorney where there is substantial evidence of an attorney's possible criminal
19 conduct.

20 (4) If there is publicity concerning the fact that an attorney is the subject of
21 an investigation or disciplinary or medical incapacity proceeding, the director may
22 issue an explanatory statement. If there is publicity concerning alleged misconduct
23 or medical incapacity of an attorney and it is determined that there is no basis for
24 further proceedings and there is no recommendation of discipline, the director may
25 issue an explanatory statement.

26 (5) In order to provide guidance to the bar, the director may provide the state
27 bar of Wisconsin a summary of facts and violations of the rules of professional
28 conduct for attorneys in a matter in which a private reprimand has been imposed.
29 The summary shall be published in an official publication of the state bar of
30 Wisconsin but may not disclose information identifying the attorney reprimanded.

31 (6) The director may provide relevant information to the supreme court
32 when seeking the temporary suspension of an attorney's license.

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33 (7) The director may provide relevant information to a state bar lawyer
34 assistance program when making a referral pursuant to SCR 21.03(9).

APPENDIX 16

1 **SCR 22.42 Subpoena.**

2 (1) In any matter under investigation, the director, ~~district committee~~, or a
3 special investigator acting under SCR 22.25, may require the attendance of lawyers
4 and witnesses and the production of documentary evidence. A subpoena issued in
5 connection with a confidential investigation must so indicate on its face. It is not a
6 breach of confidentiality for a person subpoenaed to consult with an attorney.

7 (2) In any disciplinary proceeding before a referee, the director, or the
8 director's counsel, a special investigator acting under SCR 22.25, and the
9 respondent or counsel for the respondent may require the attendance of witnesses
10 and the production of documentary evidence. The use of subpoenas for discovery
11 in a matter pending before a referee shall be pursuant to an order of the referee.
12 The service, enforcement, or challenge to any subpoena issued under this rule shall
13 be governed by ch. 885, stats., except as otherwise provided in this chapter.

14 (2m)(a) The director may issue a subpoena under this chapter to compel the
15 attendance of witnesses and the production of documents in Wisconsin, or
16 elsewhere as agreed by the witnesses, if a subpoena is sought in Wisconsin under
17 the law of another jurisdiction for use in a lawyer discipline or disability
18 investigation or proceeding in that jurisdiction, and the application for issuance of
19 the subpoena has been approved or authorized under the law of that jurisdiction.

20 (b) In a lawyer discipline or disability investigation or proceeding in this
21 jurisdiction, the director, special investigator, or respondent may apply for the
22 issuance of a subpoena in another jurisdiction, under the rules of that jurisdiction
23 when the application is in aid or defense of the investigation or proceeding, and the
24 director, special investigator, or respondent could issue compulsory process or
25 obtain formal prehearing discovery under this chapter.

26 (3) A referee may enforce the attendance of a witness and the production of
27 documentary evidence.

28 (4) The referee shall rule on a challenge to the validity of a subpoena. If a
29 referee has not been assigned to the matter, a challenge to a subpoena issued by the
30 director shall be filed with the supreme court together with a petition for the
31 appointment of a referee to rule on the challenge. (5) Subpoena and witness fees
32 and mileage are allowable and paid as provided in Wis. Stat. §§ 885.05 and
33 885.06(2). A witness subpoenaed during an investigation shall be paid subpoena

APPENDIX 16

34 fees and mileage by the person requesting the subpoena. A witness subpoenaed to
35 appear at a disciplinary or medical incapacity hearing before the referee shall be
36 paid subpoena fees and mileage by the party on whose behalf the witness appears.

APPENDIX 16A

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