

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. 19-04

In re Petition of the OLR Process Review Committee's Subcommittee on Referees for an order repealing and recreating SCR 21.08 and amending SCR 21.11(4), SCR 22.09(2), SCR 22.13(3), SCR 22.16(6), SCR 22.25(6)(c), SCR 22.30(1), SCR 22.34(10), and SCR 22.36(5) (Referee Appointment and Training)

FILED

JUN 26, 2019

Sheila T. Reiff
Clerk of Supreme Court
Madison, WI

On March 13, 2019, the Office of Lawyer Regulation (OLR) Procedure Review Committee ("Committee") filed a rule petition asking the court to consider amending and creating supreme court rules and modifying the court's Internal Operating Procedures pertaining to the appointment and training of referees. The petition was filed on behalf of the OLR Procedure Review Committee by the Honorable Gerald P. Ptacek, Chair, and Jacquelynn B. Rothstein, Chair of the Subcommittee on Referees.

The court discussed the petition at a closed administrative rules conference on March 21, 2019, and voted to seek written comments and conduct a public hearing. A letter soliciting comment was sent to interested persons on March 29, 2019, as well as to referees and counsel involved in the lawyer regulation process.

The court received six written responses in regard to the proposed rule changes from the Board of Administrative Oversight (BAO); Keith L. Sellen, Director, Office of Lawyer Regulation; Attorney Dean R. Dietrich, Dietrich Vanderwaal Law Group; John Nicholas "Nick" Schweitzer, Attorney and Referee; State Bar of Wisconsin; and Attorney David C. Rashid. The petitioner filed a response to the comments on May 9, 2019.

The court conducted a public hearing on June 6, 2019. The Honorable Gerald P. Ptacek, Chair of the Committee, and Jacquelynn B. Rothstein, Chair of the Subcommittee on Referees, presented the petition to the court. Attorney Dean R. Dietrich appeared in support of the petition both in his capacity as an attorney and as Chair of the State Bar of Wisconsin's Committee on Professional Ethics. On behalf of the BAO, Attorney Donald J. Christl and Attorney Joseph M. Russell, Chair, spoke in support of the petition and offered modifications consistent with their written comments. The Honorable Charles P. Dykman and Attorney Paul W. Schwarzenbart also spoke in favor of the petition and offered suggestions and proposed modifications. On June 12 and June 14, 2019, Attorney Donald J. Christl submitted follow-up letters to the court.

At an ensuing closed administrative rules conference, the court voted to adopt the petition with two modifications: (1) The court opted to select 15 referees rather than the proposed number of 24; and (2) the court accepted the OLR's April 24, 2019 written request

to repeal SCR 22.25(6)(c) and amend SCR 22.25(6)(b), to conform the Special Preliminary Review Panel process to that of the Preliminary Review Committee. See S. Ct. Order 04-01, 2004 WI 54 (issued May 14, 2004, eff. Jan. 1, 2005). The proposed changes to the court's Internal Operating Procedures pertaining to appointment and selection of referees, as set forth in the petition, will be made, accordingly. Therefore,

IT IS ORDERED that effective January 1, 2020:

SECTION 1. Supreme Court Rule 21.08 is repealed and recreated to read:

SCR 21.08 Referees.

(1) The referee panel consists of no more than 15 lawyers and reserve judges appointed by the supreme court. Referees shall be members of the State Bar of Wisconsin in good standing. Referees serve staggered four-year terms. A referee may be reappointed to serve consecutive terms. If a referee's term ends while an assigned matter remains pending, the referee may oversee completion of the matter unless, on its own motion or on motion of the parties, the supreme court directs the appointment of a new referee.

(2) Referees function under the supervision of the supreme court.

(3) The duties of a referee are:

(a) To preside over and conduct hearings on complaints of attorney misconduct, on petitions alleging attorney medical

incapacity, and on petitions for license reinstatement, and to issue orders necessary to advance the proceeding.

(b) To make written findings, conclusions, and recommendations, and to submit them to the supreme court for review and appropriate action.

(c) To review consensual discipline under SCR 22.09.

(d) To conduct hearings, make written findings, conclusions, and recommendations on other matters as the supreme court may direct.

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

(5) Each referee shall participate in mandatory referee training developed by the office of judicial education, as follows:

(a) Each newly appointed referee shall attend the earliest one-half day new referee orientation seminar offered following his or her appointment, unless a period of extension is granted by the office of judicial education, upon prior application by the referee. A referee reappointed to serve a consecutive term need not repeat the new referee orientation seminar.

(b) Each referee shall attend a one-half day referee training seminar every two years during the referee's four-year term when offered by the office of judicial education.

(c) If a referee fails to comply with the mandatory referee training, the office of judicial education shall advise the supreme

court and the supreme court may, following notice to the referee, remove the referee from the referee panel provided in SCR 21.08.

SECTION 2. Supreme Court Rule 21.11(4) is amended to read:

(4) ~~Staff of the supreme court shall provide formal~~ Formal training to the referees shall be provided as set forth in SCR 21.08.

SECTION 3. Supreme Court Rule 22.09(2) is amended to read:

(2) The director shall request the appointment of a referee by providing in confidence to the clerk of the supreme court the names of the grievant and respondent, the address of the respondent's principal office, and the date of the consent agreement. The clerk or deputy clerk of the supreme court shall select a an available referee from the panel provided in SCR 21.08, based on ~~availability~~ and ~~geographic proximity to~~ the location of the respondent's principal office. The chief justice or, in his or her absence, the ~~senior justice~~ chief justice's delegee shall appoint the referee selected by the clerk or deputy clerk. The director shall submit the agreement, accompanied by the respondent's public and private disciplinary history, to the appointed referee for review and approval. The director shall send a copy of the agreement to the grievant. The grievant may submit a written response to the director within 30 days after being notified of the agreement, and the director shall submit the response to the referee. The respondent and the director may submit comments to the referee regarding the grievant's response. The agreement, the grievant's response, and the

comments of the respondent and director shall be considered by the referee in confidence.

SECTION 4. Supreme Court Rule 22.13(3) is amended to read:

(3) Except as provided in SCR 22.12, upon receipt of proof of service of the complaint, the clerk or deputy clerk of the supreme court shall select ~~a~~ an available referee from the panel provided in SCR 21.08, based on ~~the availability and geographic proximity to the location of~~ the respondent's principal office~~7~~, ~~and the~~ The chief justice or, in his or her absence, the ~~senior justice~~ chief justice's delegee shall issue an order ~~appoint~~ appointing the referee selected by the clerk or deputy clerk to conduct a hearing on the complaint.

SECTION 5. Supreme Court Rule 22.16(6) is amended to read:

(6) Within 30 days after the conclusion of the hearing, ~~or~~ the filing of the hearing transcript, or the filing of a final post-hearing brief, whichever is later, the referee shall file with the supreme court a report setting forth findings of fact, conclusions of law regarding the respondent's misconduct, if any, and a recommendation for dismissal of the proceeding or the imposition of specific discipline, or a statement advising the court why the referee cannot comply with this deadline and the date by which the referee will file the report and recommendation.

SECTION 6. Supreme Court Rule 22.25(6) (b) is amended to read:

Following resubmission, if the special preliminary review panel determines that the special investigator has failed to establish

cause to proceed, it shall dismiss the matter and notify in writing the special investigator, the respondent, and the grievant of the dismissal. The panel's decision to dismiss after resubmission is final and there is no further review.

SECTION 7. Supreme Court Rule 22.25(6)(c) is repealed.

SECTION 8. Supreme Court Rule 22.30(1) is amended to read:

(1) The clerk or deputy clerk of the supreme court shall select a an available referee from the panel provided in SCR 21.08, based on ~~availability and geographic proximity to~~ the location of the petitioner's place of residence, and the chief justice or, in his or her absence, the ~~senior justice~~ chief justice's delegee shall issue an order appoint appointing the referee selected by the clerk or deputy clerk to conduct a hearing on the petition for reinstatement. In the case of a license suspension, the hearing shall not be held prior to the expiration of the period of suspension. Following the appointment of a referee, the parties shall file all papers and pleadings with the supreme court and serve a copy on the referee.

SECTION 9. Supreme Court Rule 22.34(10) is amended to read:

(10) The petition may be accompanied by a stipulation of the director and the respondent to a suspension or to the imposition of conditions on the respondent's practice of law. The supreme court may consider the petition and stipulation without the appointment of a referee. If the supreme court approves the stipulation, it shall issue an order consistent with the stipulation. If the supreme court

rejects the stipulation, the clerk or deputy clerk of the supreme court shall select ~~a~~ an available referee from the panel provided in SCR 21.08, based on ~~availability and geographic proximity to the location of~~ the respondent's place of residence~~, the~~ The chief justice or, in his or her absence, the ~~senior justice~~ chief justice's delegee shall issue an order ~~appoint~~ appointing the referee selected by the clerk or deputy clerk, and the matter shall proceed as a petition filed without a stipulation. A stipulation rejected by the supreme court has no evidentiary value and is without prejudice to the respondent's defense of the proceeding or the prosecution of the petition.

SECTION 10. Supreme Court Rule 22.36(5) is amended to read:

(5) Following the investigation, the petition shall be submitted to a referee. ~~selected by the~~ The clerk or deputy clerk of the supreme court shall select an available referee from the panel provided in SCR 21.08, based on geographic proximity to the location of the respondent's place of residence, and ~~appointed by~~ the chief justice or, in his or her absence, the ~~senior justice~~ chief justice's delegee shall issue an order appointing the referee selected by the clerk or deputy clerk to review the petition.

IT IS FURTHER ORDERED that the proposed changes to the court's Internal Operating Procedures pertaining to appointment and selection of referees, as set forth in the petition, will be made accordingly.

IT IS FURTHER ORDERED that notice of this decision be given by a single publication of a copy of this order in the official publications designated in SCR 80.01, including the official publishers' online databases, and on the Wisconsin court system's web site. The State Bar of Wisconsin shall provide notice of this order.

Dated at Madison, Wisconsin, this 26th day of June, 2019.

BY THE COURT:

Sheila T. Reiff
Clerk of Supreme Court

