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September 17, 2013

Honorable Justices of Wisconsin Supreme Court  
c/o Clerk of Supreme Court  
Attn: Deputy Clerk-Rules  
P. O. Box 1688  
Madison, WI 53701-1688

Re: Rule Petition 13-04; Petition to Amend Rules Relating to Referees In Lawyer Regulation System

Dear Honorable Justices:

I have been forwarded a copy of the above Petition, and also requested, by Julie Anne Rich, to submit my comments as a potentially interested party.

By way of background, I have had the honor of being appointed by this Court to the newly-formed Board of Administrative Oversight, in 2001, and served on that Board until 2006. Beginning in 2007, I had the additional honor of being designated a Permanent Referee to conduct hearings on attorney disciplinary matters. I have, therefore, had the opportunity to view this system both from the inside as well as the outside. Thank you for the opportunity to submit my comments on the Petition.

Before I get to the heart of my comments, I want to make sure that this Court understands that I intend absolutely no disrespect for the Office of Lawyer Regulation, for the State Bar of Wisconsin, or for Trial and Reserve Judges in our State. As a former member of the Board of Administrative Oversight, a former Governor of the State Bar of Wisconsin, and a practicing trial lawyer for 41 years, I hold all of those individuals and institutions in the highest regard. I suspect, however, that the Court is interested in my candid assessment of the Petition, and it is to that that I now turn.

Implicit in the Petition are two philosophies with which I take strong exception. The first is that trial attorneys, such as myself, are not as "fair and efficient" or as "neutral and detached" as trial judges. The last sentence of the second paragraph of the supporting memorandum implies as much. I have conducted approximately five attorney disciplinary hearings, reporting to this Court on each one, and can assure this Court that I have been as fair, neutral, and detached as I can possibly be. The suggestion that I,

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or any other trial lawyer is not efficient (meaning, one presumes, that we do not get things done quickly enough) is especially upsetting to me. I have always adhered to every deadline imposed by this Court and by its rules. I do my best to accommodate counsel for both sides of the matter.

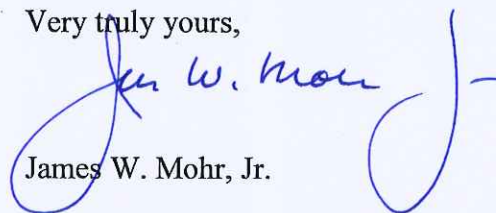
I have to tell this Court, however, that in my almost uniform experience, whenever there have been delays in resolving a matter, the delays are usually due to the Office of Lawyer Regulation. Their cases take long to investigate, long to bring to hearing, and in my experience, too long to try. If there be delays in resolving these complaints, I am confident it is not at the hands of the referees or respondent counsel, but in the excruciating slowness with which OLR brings these matters to final conclusion. If the Court is interested, I could give multiple examples. Let me offer but one.

Several years ago I presided over a disciplinary hearing which, in my judgment, could have been resolved in one or two days of testimony if OLR had properly focused on the only issue that was in dispute. Instead, the case went on interminably; it took OLR approximately eleven trial days to present its case. Since trial had originally been estimated to last two or three days, we had to continually find additional trial days, which meant that the entire hearing process lasted approximately one and one-half months, in order to accommodate all of OLR's testimony. At the end of the hearing, most of that testimony was simply irrelevant to the only issue that was in dispute. My lengthy decision was nevertheless issued within the time lines prescribed by this Court.

The second philosophy expressed in the Petition with which I disagree is that reserve judges are somehow better adjudicators than trial attorneys. Again, with all due respect, I respectfully disagree. While never a judge myself, I have tried literally hundreds of civil cases in most of the courts of this State, and in the Eastern District. I have seen many judges in action – both very good and not so very good. I have always tried to learn from each of them, and especially to observe what I liked best in their courtroom demeanor and conduct. I have tried to bring the best of what I saw in those judges to my work as a referee. I think to suggest that trial attorneys are, *ipso facto*, less able than reserve judges, is simply and unfortunately an incorrect stereotype.

I wish this Court the very best in attempting to resolve this Petition and I thank you for giving me the opportunity to provide my comments. If you require anything further of me, as always, please do not hesitate to ask.

Very truly yours,

A handwritten signature in blue ink that reads "James W. Mohr, Jr." The signature is stylized with a large, looping initial "J" and "M".

James W. Mohr, Jr.

djm