
COMMENTS REGARDING PETITIONS 19-04 AND 19-05**In the matter of REPEALING AND RECREATING Supreme Court Rule 21.08 and AMENDING additional, related Supreme Court Rules.**

The Board of Administrative Oversight, Joseph M. Russell, Chair, and Donald J. Christl, Chair of the Committee on Contested Disciplinary Matters, respectfully submits the following comments regarding petitions to repeal and recreate Supreme Court Rule 21.08 and to amend additional, related Supreme Court Rules.

BACKGROUND

The Board of Administrative Oversight read with great interest and respect the Office of Lawyer Regulation Procedure Review Committee's multiple Petitions and Supporting Memoranda. We¹ congratulate the Study Committee on the scope and depth of its effort.

As reported in earlier communications, beginning with a 2015 survey of all 53 U.S. jurisdictions' disciplinary processes, the Board evaluated Wisconsin's grievance procedure with the sole objective of identifying changes to expedite the resolution of contested matters. (By some measures, the average duration of a contested case exceeded 43 months, a duration the Board deemed excessive.) Following investigative procedures, committee evaluations and multiple Board meetings, we submitted our report and proposals to you on January 5, 2018, (the "2018 Report") and simultaneously provided copies of the 2018 Report to the Study Committee (in the persons of its Chair, the Honorable Gerald P. Ptacek, and Reporter, Ms. Marsha Mansfield). Also in January 2018, representatives of the Board reviewed the 2018 Report with

¹ Throughout, these Comments refer to the Supreme Court as the "Court" or "you," to the Office of Lawyer Regulation Procedure Review Committee as the "Study Committee" and to the Board of Administrative Oversight as the "Board," "we" and "us."

the Court, members of the Study Committee and others at the annual joint meeting for components of the lawyer regulation system.

The Petitions far exceed our study and proposals in scope and volume. We, therefore, restricted our review, and limit these Comments, to only those Petitions addressing topics the Board has already reviewed. Although individual Board members may react to other Study Committee proposals, the following Comments address Petitions 19-04 and 19-05. (We, of course, may offer additional comments on subsequent petitions as the Court considers them.)

GENERAL COMMENTS

The Board pleasantly noted a significant parallel between the Study Committee's proposals and those contained in our 2018 Report.

As evidenced by the Comments below, both the Study Committee and we recognize the value of enhancing the quality and role of the referees. We both propose improving the referees' preparation and expanding the discretion they exercise to include disposition of minor disciplinary matters. Among other results, such as reducing the time consumed by a contested matter, the changes proposed by the Petitions and these Comments would free the Court's time and attention—the state's most valuable judicial resource—for pursuits of more sweeping scope and effects. (The following Comments parallel both Petitions in proposing that the Rules remain unchanged regarding allegations of major disciplinary violations, and requiring their disposition solely by the Court.)

Our proposals to the Court sought three objectives: (i) expedite the resolution of contested disciplinary matters, (ii) protect the right to due process of all parties involved and (iii) maintain

consistency—internal consistency in the proposed changes themselves, consistency with existing Supreme Court Rules and consistency with distinctions the Court has already established.

In light of the above, the Board respectfully encourages the Court to adopt the proposals appearing in Petitions 19-04 and 19-05 regarding the selection, training, assignment (to specific matters) and authority of referees— all subject to the enhancements proposed herein. (Please note that the following Comments introduce no new concepts for the Court's evaluation; every recommendation appearing below appeared in the Petitions or the 2018 Report.)

SPECIFIC COMMENTS

Petitions 19-04 and 19-05 propose the repeal and recreation of SCR 21.08; each Petition, though, proposes a different recreation of the Rule. The Board endorses the substance of both Petitions' restatements; and, to achieve the internal consistency mentioned above, proposes that the Court adopt a consolidation of both versions as follows:

SCR 21.08(1) is amended and restated in its entirety to read:

21.08(1)(a) Referees.

(1) The supreme court shall appoint a panel of 12 lawyers and reserve judges to conduct hearings on complaints of attorney misconduct, petitions alleging attorney medical incapacity and petitions for license reinstatement. Except as provided in par. (b), referees shall make findings, conclusions and recommendations and submit them to the supreme court for review and appropriate action.

(2) Referees shall serve staggered four-year terms. A referee may be reappointed to serve consecutive terms. If a referee's term ends while a matter assigned to the referee remains pending, the referee may oversee completion of the matter unless, on its own motion or on motion of a party, the supreme court directs the appointment of a new referee.

21.08(1)(b) In addition to the duties imposed by par. (1)(a) above, upon considering matters pursuant to SCR 22.09, 22.12 or 22.16, referees may make findings and conclusion of attorney misconduct and impose discipline if any of the following applies:

(1) The referee imposes a private or public reprimand or suspends the attorney's license to practice law for less than six months.

(2) The referee approves a stipulation pursuant to SCR 22.12 to impose discipline defined in SCR 21.16(lm)(a) through (f).

SCR 21.08(1)(c) Each referee shall participate in mandatory referee training developed by the judicial education office, as follows:

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

(2) Every two years during the referee's four-year term, each referee shall attend a one-half day referee training seminar when offered by the judicial education office.

(3) If a referee fails to comply with the referee training mandated herein, the judicial education office shall advise the supreme court and the supreme court may, following notice to the referee, remove the referee from the referee panel established pursuant to par. (1)(a) above.

21.08(2) Referees shall function under the supervision of the supreme court pursuant to procedures recited in SCR chapter 22 and consistent with the Code of Conduct appearing as SCR chapter 24.

1. **Concurrence.** Both the Study Committee and we recommend (a) reducing the size of the referee corps, (b) requiring more formal and regular continuing education for referees, (c) adopting methods for the more expeditious appointment of referees to specific matters, (d) streamlining hearing procedures and (e) authorizing referees to dispose of certain matters without requiring action by the Court.

2. **Number.** Petition 19-04 proposed reducing the roster of referees to no more than 24; our 2018 Report proposed reducing it to 12. Both the Study Committee and we recognize that a smaller number can promote greater consistency and quality in referee functioning. The greater the concentration of responsibility, the greater the opportunity for enhanced quality and uniformity.

A question remains as to the proper level of concentration, recognizing the practical issues of maintaining a roster large enough to achieve the appropriate geographical distribution of referees and to avoid overburdening those selected.

During a recent 12-month period, the Court allocated 30 disciplinary matters to 17 different referees. If 12 proves too few, 24 may prove unnecessarily many. Possibly, the Court could achieve the degree of concentration both the Study Committee and we seek by selecting an intermediate number.

3. Referee Authority. Petition 19-04 restricts referees to written findings, conclusions and recommendations, all subject to action by the Court. Petition 19-05 authorizes referees to issue reprimands, suspend licenses, accept consensual discipline and approve stipulated discipline. The latter version parallels proposals appearing in our 2018 Report.

(a) **Disposition of Contested Matters.** The Board endorses the substance of SCR 21.08(1)(b) as recreated by Petition 19-05 with two changes.

The first substitutes "less than six months" for the reference to "three months" in clause 1 of SCR 21.08(1)(b)(1). The Court has already established six months as a significant period of license suspension. Suspensions of a shorter duration do not require hearings for reinstatement; those of six months or longer do require hearings for reinstatement (SCR 22.28(2) and (3)). Rather than introduce new distinctions into the Rules and to maintain consistency between the proposed changes and already existing Rules, the Board defers to the Court's establishment of the earlier distinction and, for the Rule recited above, proposes inserting a reference to "less than six months" in SCR 21.08.

The second, more serious, change authorizes referees to dispose of comparatively minor contested disciplinary matters as measured by the sanctions merited--those resulting in private or public reprimands or license suspensions of less than six months. As discussed below, such a change would more fully utilize the referees' expertise, expedite the lesser disciplinary cases and free the Court's calendar for more important matters. It seeks judicial economy.

As also indicated below, to complete the delegation of authority in lesser matters, the Board endorses the Petitions' changes to SCR 12.16 and 22.17, protecting the parties' right to appeal a referee's disposition of a disciplinary matter.

Restricting referees' authority to impose sanctions only up to limited license suspensions preserves the Court's direct authority over disposition of the most serious discipline matters and reserves to the Court the imposition of the heaviest penalties, license suspensions of six months or more and license revocation. Such an approach values the Court's time and unique perspective, reserving to the Court the most serious cases and, at the same time, reduces the time necessary to resolve cases involving lesser misconduct.

The referees have already demonstrated an impressive consistency with the Court's perspective on attorney discipline. During a recent 24 month period, the Court imposed public discipline in 73 cases. Of those, it issued 13 public reprimands and 28 suspensions for a duration shorter than 6 months (thereby not requiring reinstatement hearings). The Court accepted the referees' recommended sanction in all the reprimand cases and in all but two suspension cases (for one, the Court imposed a shorter suspension than recommended; for the other, longer than recommended). History, therefore, suggests that sanctions in lesser cases, if imposed by

referees—particularly a more exclusive and better trained panel of referees—would substantially parallel sanctions the Court imposes in such cases.

As mentioned above, the average duration of a contested disciplinary matter exceeds 43 months. Submission to, and action by, the Court consumes seven of those months. Therefore, authorizing referees to dispose of lesser matters would not only free the Court's calendar for matters of greater impact but would also reduce, by an average of seven months, the time required to resolve all matters resulting in private reprimands and in 56% of all matters resulting in public discipline.

(b) **Stipulations and Consent.** The Board concurs in the revisions to SCR 21.08(1)(b) and 22.12 proposed by Petition 19-05 with one exception. Petition 19-05 restricts the affected discipline to a suspension not exceeding one year. In our 2018 Report, the Board proposed allowing referee approval of stipulated discipline to any degree of severity.

As a result, the Board respectfully proposes that the Court repeal and recreate SCR 21.08(1)(b)(2) as stated above and amend SCR 22.12 as proposed in Petition 19-05 but, in doing so, create SCR 22.12(a)(3)(a) to read as follows:

(3)(a) If the parties have stipulated to the imposition of discipline pursuant to SCR 21.16(1), a referee appointed pursuant to SCR 22.13(3) may (i) approve the stipulation and impose the discipline to which the parties stipulated, (ii) reject the stipulation or (iii) direct the parties to consider specific modifications to the stipulation.

The Board identified no reason to restrict the sanctions available in consent discipline. The procedures defined in the Petition and the Board's 2018 Report protect the interest of the public and the grievant by requiring the approval of the Director and the referee to the sanction stipulated and protect the interest of the respondent by requiring that respondent (and, if

involved, respondent's counsel) explicitly consent to the sanction imposed. A limit on the extent of consensual discipline protects no other interest; as a result, we respectfully recommend elimination of the restriction.

(c) **Appeal Rights.** We concur in the recreation of SCR 22.16(6)(b) and SCR 22.17(1)(a)(2) as proposed in Petition 19-05, assuring parties' right to appeal a referee's order dismissing an allegation or imposing a sanction pursuant to SCR 21.08(1)(b). Doing so protects the parties and reflects the Court's ultimate authority in lawyer disciplinary matters.

4. **Referee Code of Conduct.** As stated above, in great part, the Petitions parallel the proposals appearing in our 2018 Report. We, though, proceeded one step further in proposing the creation of a Referee Code of Conduct.

The Referee Code parallels the Judicial Code of Conduct appearing as SCR Chapter 60, revised to reflect the circumstances of a referee.

SCR 22.16 recites: "The referee has the powers of a judge. . . ." The referee's current authority, the enhancement of the referee corps both the Study Committee and we propose (more selective inclusion, formal training, etc.) and the expansion of referee authority both the Study Committee and we propose deem it appropriate explicitly to require the referees' adherence to standards similar to those imposed upon the judiciary. (Many of us would consider the strictures of the Referee Code obvious or common sense but recitation of the principles, as the Court did for the judiciary, heightens the dignity of the referees and erases uncertainties as to requirements placed on their conduct and the conduct of those who might influence them.)

Requiring referee adherence to the Code of Conduct imposes upon the referees enhanced accountability paralleling their enhanced authority and will further public confidence in the integrity of the discipline system.

Thus, we propose the addition to the Supreme Court Rules of a new chapter 24 to read as recited in **Exhibit A** attached hereto.

To complete the inclusion of the Referee Code of Conduct, the Rules require reference to an enforcement procedure. Because experience supports an expectation of few allegations regarding referee misconduct pursuant to the Code and paralleling the Court's approach in SCR 22.25(8) to allegations of misconduct by OLR employees, the Board respectfully proposes the Code conclude with a provision stating:

ENFORCEMENT

The director shall refer allegations that a referee violated SCR chapter 24 to the Supreme Court for appropriate action.

SUMMARY

The Board endorses Petitions 19-04 and 19-05 and encourages the Court to adopt the Rule changes proposed therein.

These Comments propose preserving the substance of SCR 21.08 as proposed by both Petitions, subject to only the following three revisions:

1. Restate SCR 21.08 as appearing on pages 3 and 4 above to incorporate the enhanced referee corps as proposed in Petition 19-04 and the expanded referee authority as proposed in Petition 19-05.

- (a) Instead of authorizing up to 24 referees, authorize 12 referees or such intermediate number as the Court determines. SCR 21.08(1)(a)(1).

(b) Authorize referees to impose sanctions including private and public reprimands and license suspensions of less than six months to correspond with the distinction already appearing in SCR 22.28(2) and (3). SCR 21.08(1)(b)(1).

2. Upon stipulation by both the director and respondent, authorize referees to impose any sanction permitted by SCR 21.16(1) as appearing on page 6 above. SCR 21.08(1)(b) and 22.12(a)(3)(a)

3. Adopt the Referee Code of Conduct as recited in Exhibit A attached hereto. SCR 21.08(2) and chapter 24.

CONCLUSION

The Board of Administration Oversight submits these Comments, respecting the Court's ultimate authority to govern the practice of law and respecting the Study Committee's effort and expertise in preparing the subject Petitions. We recommend revisions to the Petitions' proposals only to incorporate proposals the Board has already submitted to the Court in our 2018 Report; these Comments add nothing beyond our prior recommendations.

Respectfully submitted,

Board of Administrative Oversight

By:

Joseph M. Russell, Chair

Donald J. Christl, Committee Chair

EXHIBIT A

REFEREE CODE OF CONDUCT

PREAMBLE

Purpose. The attorney disciplinary system requires independent, fair and competent arbiters to interpret and apply the rules and laws governing the legal profession. As such arbiters, referees, individually and collectively, must respect and honor their office as a public trust and strive to enhance and maintain confidence in the disciplinary system. They serve as highly visible symbols of justice under the rule of law.

The Referee Code of Conduct (the "Code") recites rules of reason to be applied consistently with constitutional requirements, statutes, other court rules and decisional law and in the context of all relevant circumstances. The Code shall not impinge on the essential independence of referees in making disciplinary decisions, findings, interpretations or recommendations.

The Code guides and provides referees a structure for governing their conduct, both professionally and personally. Every transgression of the Code, however, shall not result in disciplinary action. The appropriateness of disciplinary action, and the degree of discipline imposed, should result from a reasonable and reasoned application of the text and should reflect factors such as the seriousness of the transgression, the presence or absence of a pattern of improper activity and the effect of the improper activity on others or on the disciplinary system.

The Code is not designed or intended as a basis for civil liability or criminal prosecution. Furthermore, the purpose of the Code would be subverted if the Code were invoked by lawyers or parties for mere tactical advantage in a proceeding.

Application. The text's use of "shall," "shall not" or "may not" imposes binding obligations, the violation of which can result in disciplinary action. For a referee to have violated a rule, the referee must have known or reasonably should have known the facts giving rise to the violation.

The use of "should" or "should not" in the rules shall encourage or discourage specific conduct and state what is or is not appropriate conduct but does not recite a binding rule pursuant to which a referee may be disciplined. When "may" is used, it denotes permissible discretion or, depending on the context, refers to action that is not covered by specific proscriptions.

Conclusion. The Referee Code of Conduct is not an exhaustive guide; referees should also govern their professional and personal activities by general ethical standards. The Code, however, states basic principles to assist referees in establishing and maintaining high standards of professional and personal conduct.

CODE

SCR 24.1 Definitions.

In this chapter:

(1) "Appropriate authority" means the Wisconsin Supreme Court, Chief Justice and the Office of Lawyer Regulation.

(2) "De minimis" means an insignificant interest that does not raise reasonable question as to a referee's impartiality.

(3) "Economic interest" means ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor or other active participant in the affairs of a party, except that none of the following is an economic interest:

(a) Ownership of an interest in a mutual or common investment fund that holds securities, unless the referee participates in the management of the fund or unless a proceeding pending or impending before the referee substantially affects the value of the interest.

(b) Service by a referee as an officer, director, advisor or other active participant in an educational, religious, charitable, fraternal or civic organization, or service by a referee's spouse or child as an officer, director, advisor or other active participant in any organization.

(c) A deposit in a financial institution, the proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association or of a member in a credit union, or a similar proprietary interest, unless a proceeding pending or impending before the referee could substantially affect the value of the interest.

(d) Ownership of government securities, unless a proceeding pending or impending before the referee could substantially affect the value of the securities.

(4) "Fiduciary" means a personal representative, trustee, attorney-in-fact, conservator or guardian.

(5) "Impartiality" means the absence of bias or prejudice in favor of, or against, particular parties, or classes of parties, as well as maintaining an open mind in considering issues that may come before the referee.

(6) "Knowingly" or "knowledge" means actual knowledge of the fact in question, which may be inferred from the circumstances.

(7) "Law" means court rules, statutes, constitutional provisions and legal conclusions in published court decisions.

(8) "Member of the referee's family" means the referee's spouse, child, grandchild, parent, grandparent and any other relative or person with whom the referee maintains a close familial relationship.

(9) "Member of the referee's family residing in the referee's household" means a relative of the referee by blood or marriage or a person treated by the referee as a member of the referee's family who resides in the referee's household.

(10) "Nonpublic information" means information that, by law, is not available to the public, including information that is sealed by statute or court order, impounded or communicated in camera, offered in grand jury proceedings or contained in presentencing reports, dependency case reports or psychiatric reports.

(11) "Require" means the exercise of reasonable direction and control over the conduct of those persons subject to the directions and control.

(12) "Third degree of kinship" means a person who is related as a great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece.

SCR 24.2 A referee shall uphold the integrity and independence of the disciplinary process.

An independent and honorable disciplinary system is indispensable to the function of the legal profession. A referee should participate in establishing, maintaining and enforcing high standards of conduct and shall personally observe those standards in such a manner as to preserve the integrity and independence of the disciplinary system. This chapter applies to every aspect of referee behavior except purely legal decisions. Legal decisions made in the course of referee duty on the record are subject solely to judicial review.

SCR 24.3 A referee shall avoid impropriety and the appearance of impropriety in all of the referee's activities.

(1) A referee shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the disciplinary process.

(2) A referee may not allow family, social, political or other relationships to influence the referee's adjudicative conduct or judgment. A referee may not lend the prestige of the office to advance the private interests of the referee or of others or convey or permit others to convey the impression that they are in a special position to influence the referee.

(3) A referee may not hold membership in any organization that practices invidious discrimination on the basis of race, gender, religion or national origin.

SCR 24.4 A referee shall perform the duties of the office impartially and diligently.

The referee's duties include all the duties of the office prescribed by law.

(1) **Adjudicative Functions.** In the performance of the duties pursuant to this section, the following apply to adjudicative responsibilities:

(a) A referee shall hear and decide matters assigned to the referee, except those in which recusal is required and except when referee substitution is requested and granted.

(b) A referee shall be faithful to the law and maintain professional competence in it. A referee may not be swayed by partisan interests, public clamor or fear of criticism.

(c) A referee shall require order and decorum in proceedings before the referee.

(d) A referee shall be patient, dignified and courteous to complainants, respondents, witnesses, lawyers and others with whom the referee deals in an official capacity and shall require similar conduct of lawyers and others subject to the referee's direction and control. During hearings, a referee shall act so that the referee's attitude, manner or tone toward the parties, counsel or witnesses does not prevent the proper presentation of the cause or the ascertainment of the truth. A referee may properly intervene if the referee considers it necessary to clarify a point or expedite the proceedings.

(e) A referee shall perform the duties of the office without bias or prejudice. A referee may not, in the performance of duties, by words or conduct, manifest bias or prejudice, including bias or prejudice based upon race, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status, and may not knowingly permit others subject to the referee's direction and control to do so.

(f) A referee shall require lawyers in proceedings before the referee to refrain from manifesting, by words or conduct, bias or prejudice based upon race, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status against parties, witnesses, counsel or others. This subsection does not preclude legitimate advocacy when race, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status or other similar factors are issues in the proceeding.

(g) A referee may not initiate, permit, engage in or consider ex parte communications concerning a pending or impending action or proceeding except that:

1. A referee may initiate, permit, engage in or consider ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits if all of the following conditions are met:

a. The referee reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication.

b. When the ex parte communication may affect the substance of the action or proceeding, the referee promptly notifies all of the other parties of the substance of the ex parte communication and allows each party an opportunity to respond.

2. A referee may obtain the advice of a disinterested expert on the law applicable to a proceeding before the referee if the referee gives notice to the parties of the person consulted and the substance of the advice and affords the parties reasonable opportunity to respond.

3. A referee may consult with other referees or with personnel whose function is to aid the referee in carrying out the referee's adjudicative responsibilities.

4. A referee may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to resolve matters pending before the referee.

5. A referee may initiate, permit, engage in or consider ex parte communications when expressly authorized by law.

(h) A referee shall dispose of all disciplinary matters promptly and efficiently.

(i) A referee shall uphold and apply the law and shall perform all duties of office fairly and impartially. A referee shall also afford to every person who has a legal interest in a proceeding, or to that person's lawyer, the right to be heard according to the law. A referee may make reasonable efforts, consistent with the law and rules, to facilitate the ability of all parties, including self-represented parties, to a fair hearing.

(j) A referee may not, while a proceeding is pending or impending, make any public comment that may reasonably be expected to affect the outcome or impair the fairness of the proceeding. The subsection does not prohibit a referee from making public statements in the course of his or her official duties or from explaining for public information the procedures of the disciplinary system.

(k) A referee may not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a referee's official capacity.

(2) **Cooperation.** A referee shall cooperate with other referees as members of a common referee's system to promote the satisfactory administration of justice.

(3) **Responsibilities.** In the performance of the duties under this section, the following apply to the referee's responsibilities:

(a) A referee who receives information indicating a substantial likelihood that another referee has committed a violation of this chapter should take appropriate action. A referee having personal knowledge that another referee has committed a violation of this chapter that raises a substantial question as to the other referee's fitness for office shall inform the appropriate authority.

(b) A referee who receives information indicating a substantial likelihood that a lawyer has committed a violation of the rules of professional conduct for attorneys should take appropriate action. A referee having personal knowledge that a lawyer has committed a violation of the rules of professional conduct for attorneys that raises a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority. This paragraph does not require a referee to report conduct disclosed

through a referee's participation in a group to assist ill or disabled judges or lawyers when such information is acquired in the course of assisting an ill or disabled judge or lawyer.

(c) Acts of a referee, in the discharge of disciplinary responsibilities, required or permitted pursuant to par. (a) or (b) hereof are part of a referee's duties and shall be absolutely privileged and no civil action predicated on those acts may be instituted against the referee.

(4) **Recusal.** Except as provided in sub. (f) for waiver, a referee shall recuse himself or herself in a proceeding when the facts and circumstances the referee knows or reasonably should know establish one of the following or when reasonable, well-informed persons knowledgeable about ethics standards and the disciplinary system and aware of the facts and circumstances the referee knows or reasonably should know would reasonably question the referee's ability to be impartial:

(a) The referee has a personal bias or prejudice concerning a party or a party's lawyer or personal knowledge of disputed evidentiary facts concerning the proceeding.

(b) The referee served as a lawyer in the matter in controversy, or a lawyer with whom the referee currently or previously practiced law served during such association as a lawyer concerning the matter, or the referee has been a material witness concerning the matter.

(c) The referee knows that he or she, individually or as a fiduciary, or the referee's spouse or minor child wherever residing, or any other member of the referee's family residing the referee's household has an economic interest in the subject matter in controversy or in a party to the proceeding or has any other more than de minimis interest that could be substantially affected by the proceeding.

(d) The referee or the referee's spouse, or a person within the third degree of kinship to either of them, or the spouse of such a person meets one of the following criteria:

1. Is a party to the proceeding or an officer, director or trustee of an entity involved in the actions giving rise to the proceeding.

2. Is acting as a lawyer in the proceeding.

3. Is known by the referee to have a more than de minimis interest that could be substantially affected by the proceeding.

4. Is to the referee's knowledge likely to be a material witness in the proceeding.

(e) The referee has made a public statement that commits, or appears to commit, the referee with respect to any of the following:

1. An issue in the proceeding.

2. The controversy in the proceeding.

(f) A referee required to recuse himself or herself pursuant to sub. (4) above may disclose on the record the basis of the referee's recusal and may ask the parties and their lawyers to consider, out of the presence of the referee, whether to waive recusal. If, following disclosure of any basis for recusal other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the referee, all agree that the referee should not be required to recuse himself or herself and the referee is then willing to participate, the referee may participate in the proceeding. In such a case, the record of the proceeding shall incorporate the parties' agreement to allow the referee's participation therein.

(5) **Financial Interests.** A referee shall keep informed of the referee's own personal and fiduciary economic interests and make a reasonable effort to keep informed of the personal economic interests of the referee's spouse and minor children residing in the referee's household, having due regard for the confidentiality of the spouse's business.

SCR 24.5 A referee shall so conduct the referee's other activities as to minimize the risk of conflict with referee obligations.

(1) **Activities in General.** A referee shall conduct all of the referee's activities so that they do none of the following:

- (a) Cast reasonable doubt on the referee's capacity to act impartially as a referee.
- (b) Demean the referee office.
- (c) Interfere with the proper performance of referee duties.

(2) **Other Activities.** A referee may pursue employment, conduct a business or professional practice, perform volunteer work, speak, write, lecture, teach and participate in other activities whether or not concerning the law, the legal system, the administration of justice and nonlegal subjects, all consistent with the requirements of this chapter.

ENFORCEMENT

The Director shall refer allegations that a referee violated this Code of Conduct to the supreme court for appropriate action.