
In the Matter of the Petition
For Amendment to Supreme Court
Rule 22.001(3) Relating to Cost
Assessments in the Lawyer
Regulation System

DANIEL L. SHNEIDMAN 05-01
RESPONSE TO OLR PETITION
AND STATE BAR OF WISCONSIN (SBW)
ALTERNATIVE PROPOSALS

TO: Chief Justice Shirley S. Abrahamson
Justice Jon P. Wilcox
Justice Ann Walsh Bradley
Justice N. Patrick Crooks
Justice David Prosser, Jr.
Justice Patience D. Roggensack
Justice Louise B. Butler

Filed with the Clerk of Court Cornelia G. Clark
Clerk of Supreme Court Office
110 East Main Street
Suite 215
Madison, WI 53703

OLR PROPOSED AMENDMENT

Section 22.001 Definitions.

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

OLR PROPOSED AMENDMENT APPROPRIATE BECAUSE:

Amended language and policy consistent with the financial responsibility of the integrated State Bar of Wisconsin and its members, and consistent with the American Rule of each party bearing their own attorney fees.

**DANIEL L. SHNEIDMAN RESPONSE TO STATE BAR OF WISCONSIN
PROPOSED ALTERNATIVE TO OLR PETITION**

DANIEL L. SHNEIDMAN PROPOSED AMENDMENT:

SCR 22.16 Proceedings before a referee.

(1) Unless otherwise required by law or in this chapter, (a) the referee has the powers of a judge trying a civil action and shall conduct the hearing as the trial of a civil action to the court; and (b) the rules of civil procedure and evidence shall be followed. The referee shall obtain the services of a court reporter to make a verbatim record of the proceedings, as provided in SCR 71.01 to 71.03.

SHNEIDMAN PROPOSED AMENDMENT APPROPRIATE BECAUSE:

If court adopts State Bar of Wisconsin proposed SCR 22.16(7), this language clarifies discovery and OLR burden of proof issues.

STATE BAR OF WISCONSIN PROPOSED AMENDMENT:

SCR 22.16 Proceedings before a referee.

...

(7) Within 20 days of the filing of the referee's report, the office of lawyer regulation shall file with the referee, with copy to the respondent, a statement of costs and recommendation concerning an assessment of all or a portion of the costs against the respondent. The respondent may file an objection to the statement and recommendation within 10 days of receipt. The office of lawyer regulation may reply

within 5 days of receiving the objection. The referee shall file a recommendation as to the assessment of reasonable costs with the court within 10 days after the parties' submissions. The referee shall consider the submissions of the parties and the record in the proceeding. No further discovery or hearing is authorized. The director has the burden of establishing ~~by clear, satisfactory and convincing~~ **BY A PREPONDERANCE OF THE** evidence the costs to be assessed. The factors to be considered by the referee in making a recommendation shall include, **BUT NOT LIMITED TO**, the following:

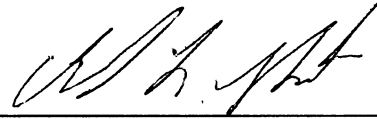
- a. The number of counts charged contested, and proven;
- b. The severity of counts charged, contested, and proven;
- c. The level of discipline sought by the parties and recommended by the referee;
- d. The respondent's cooperation with the disciplinary process; and
- (e) The respondent's ability to pay.
- (f) THE TOTALITY OF CIRCUMSTANCES.**

SBW PROPOSED RULE, AS AMENDED, IS APPROPRIATE BECAUSE:

It charges OLR and the respondent with appropriate costs and allows the referee to make a recommendation to the court. It further allows reasonable litigation limitations on the issue of costs and fees. It is also consistent with SCR Chapter 20 Scope which provides:

"Moreover, the rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations."

Respectfully submitted this 18th day of November, 2005.



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