



October 1, 2013

Clerk of Supreme Court  
Attention: Deputy Clerk – Rules  
P.O. Box 1688  
Madison, WI 53701-1688

RE: Rule Petition 13-04, Petition to Amend Rules Relating to Referees in the Lawyer Regulation System

Dear Deputy Clerk:

I am writing to provide comment to Rule Petition 13-04. I am also writing to request the opportunity to appear in person at the public hearing scheduled for October 25, 2013.

I do not have major concerns with the proposed amendment to SCR 21.08 - Referees. I understand the Office of Lawyer Regulation is looking to develop a permanent panel of referees and an auxiliary panel of referees. As a practitioner in the Lawyer Regulation System, I understand the need to have competent lawyers and judges to serve as referees. The issues raised in OLR proceedings are very complex and very meaningful for both the Office of Lawyer Regulation and the respondent attorney.

I write in regard to SCR 22.13(4) of the Supreme Court Rules. This provision allows the Office of Lawyer Regulation and/or the respondent to file a motion for substitution of an appointed referee within 10 days of notice of the appointment. I believe that this Rule should be amended to provide that the respondent may request a substitution of the appointed referee but not the Office of Lawyer Regulation. If OLR is recommending the permanent and auxiliary panel members, it does not seem appropriate that OLR should also have the right to seek the substitution of a referee after appointed by the Supreme Court. It is important that the lawyer/respondent have the right to seek a substitution because of the potential for prior experience before a judge or prior representation adverse to a lawyer which may create questions regarding the appropriateness of a particular judge/lawyer serving as referee to consider the conduct of the respondent.

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I would therefore strongly suggest that the language of SCR 22.13(4) be modified to eliminate the right of OLR to seek substitution of an appointed referee. *See attached language.*

Thank you for the opportunity to comment. I again request the opportunity to appear at the public hearing on October 25.

Thank you for your consideration.

Very truly yours,

RUDER WARE

A handwritten signature in black ink, appearing to read "Dean R. Dietrich". The signature is fluid and cursive, with a large initial "D" and a long horizontal stroke extending to the right.

Dean R. Dietrich

cc: Roddy Willis Rogahn, Esq.  
Keith Sellen, Esq.  
Patrick Fiedler, Esq.

- (4) 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 complaint.

History: Sup. Ct. Order No. 99-03, 2000 WI 106, 237 Wis. 2d xix.

#### **SCR 22.13 Service of the complaint.**

- (1) The complaint and the order to answer shall be served upon the respondent in the same manner as a summons under section 801.11 (1) of the statutes. If, with reasonable diligence, the respondent cannot be served under section 801.11 (1) (a) or (b) of the statutes, service may be made by sending by certified mail an authenticated copy of the complaint and order to answer to the most recent address furnished by the respondent to the state bar.
- (2) Service of other pleadings and papers shall be in the manner provided in the rules of civil procedure.
- (3) Except as provided in SCR 22.12, upon receipt of proof of service of the complaint, the clerk of the supreme court shall select a referee from the panel provided in SCR 21.08, based on availability and geographic proximity to the respondent's principal office, and the chief justice or, in his or her absence, the senior justice shall appoint the referee to conduct a hearing on the complaint.
- (4) Within 10 days after notice of appointment of the referee, ~~the director and~~ the respondent each may file with the supreme court a motion for substitution of the referee. The filing of the motion does not stay the proceedings before the referee unless ordered by the supreme court. One timely motion ~~filed by the director and one timely motion~~ filed by the respondent shall be granted as a matter of right. Additional motions shall be granted for good cause.
- (5) 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.

History: Sup. Ct. Order No. 99-03, 2000 WI 106, 237 Wis. 2d xix; Sup. Ct. Order No. 01-12A, 2002 WI 8, 249 Wis. 2d xiii.

#### **SCR 22.14 Answer, no contest.**

- (1) The respondent shall file an answer with the supreme court and serve a copy on the office of lawyer regulation within 20 days after service of the complaint. The referee may, for cause, set a different time for the filing of the answer.
- (2) The respondent may by answer plead no contest to allegations of misconduct in the complaint. The referee shall make a determination of misconduct in respect to each allegation to which no contest is pleaded and for which the referee finds an adequate factual basis in the record. In a subsequent disciplinary or reinstatement proceeding, it shall be conclusively presumed that the respondent engaged in the misconduct determined on the basis of a no contest plea.

History: Sup. Ct. Order No. 99-03, 2000 WI 106, 237 Wis. 2d xix.

#### **SCR 22.15 Scheduling conference.**

- (1) The referee shall hold a scheduling conference within 20 days after the time for answer and may do so by telephone. Each party shall participate in person or by counsel. If no answer is filed, the referee may hear any motions, including a motion for default, at the scheduling conference.
- (2) If an answer is filed, the referee shall do all of the following:
- (a) Provide for depositions upon request of either party and for time limits for the completion of depositions.
  - (b) Determine the form and extent of other discovery to be allowed and time limits for its completion.