

Memorandum

SUPREME COURT OF WISCONSIN
OFFICE OF LAWYER REGULATION
110 EAST MAIN STREET, SUITE 315, MADISON, WI 53703-3383
(608) 267-7274 TOLL FREE (877) 315-6941



DATE: September 17, 2013
TO: Clerk of the Supreme Court and Court of Appeals
ATTN: Carrie Janto
FROM: Director, Office of Lawyer Regulation
SUBJECT: Rule Petition 13-04: Response to Request for Information

On August 5, 2013, Commissioner Julie Rich requested information regarding Rule Petition 13-04, Petition to amend rules relating to referees in the Lawyer Regulation System. This response is submitted with the approval of the Board of Administrative Oversight.

OLR responds to the information requests as follows.

How many hours per week do you estimate each of the four proposed referees would be required to invest on lawyer disciplinary matters?

The petition contemplates that the permanent referees would be no more than four, but could be fewer than four. During the past two fiscal years, referees worked approximately 3100 hours [\$173,000 paid to referees during the past two fiscal years divided by \$55.64 hourly rate during those years]. As a result, all four referees together would have averaged approximately 30 hours per week [3100 hours over the past two years divided by 104 weeks]. The Court may use fewer than four referees and may contract for varying amounts of time. At this point, it would seem prudent to appoint one or two referees to the permanent panel.

How many referees will be members of an auxiliary panel?

The number is intentionally not fixed, but left to the Court's discretion to allow for contingencies. The Annual Report lists 32 referees. Although fewer auxiliary referees should be required, this number need not change.

How would an auxiliary group of referees be selected?

Referees for the auxiliary panel should be selected in the manner referees are currently selected, except that referees should be reserve judges or attorneys with substantial judicial or litigation experience.

What constitutes "substantial judicial or litigation experience" for purposes of the proposed rule?

The petition intentionally leaves this question to the judgment of the Court. The Court may wish to establish a standard in its personnel policies. The Court may wish to modify the standard from time to time based upon market factors and the needs of the lawyer regulation system. OLR recommends a minimum of 5 years judicial experience or 10 years litigation experience. The Court should also consider the nature of the experience. Referees must effectively exercise the powers of a civil trial judge: manage

cases efficiently, decide pretrial motions effectively, apply the rules of evidence, and draft findings of fact, conclusions of law, and recommendations.

What is the anticipated nature of the “contractual arrangement” between the referees and the court?

In the 1990’s and early 2000’s, BAPR and OLR had contractual arrangements with retained counsel in which counsel were paid a monthly amount. This provided for counsel’s regular availability because they were assured compensation for regular work. Counsel then received cases such that the work required made their pay equivalent to the per diem rate. A similar arrangement is proposed for the permanent panel of referees.

Should geographic considerations be part of the referee selection process? Do you anticipate increased travel time and related costs for these referees?

Supreme Court Rule 22.09(2) and 22.13(3) will still require consideration of geographic proximity to the respondent’s office. Supreme Court Rule 22.16(2) provides that the hearing will be in the county of the respondent’s office, or for cause at a different location.

OLR expects that geographic considerations would remain part of the referee selection process and that assignments would continue to consider geographic proximity. The petition would change this process in one regard, that auxiliary referees would be appointed only when no permanent referees are available.

Travel costs may increase, but the increase is expected to be minimal. Geographic diversity among the permanent referees could exist. Presently, the most proximate referee is not always assigned. Sometimes, geographic proximity results in a recusal. Most of the referee’s work is done without travel.

How would substitution requests be handled under the proposed amendment?

There would be no change in the process for substitution requests.

How should the court select the four referees?

The petition does not prescribe a procedure. OLR recommends that the Court should advertise for candidates; refer candidates to a panel consisting of one Justice, one attorney who regularly represents OLR in lawyer regulation cases, and one attorney who regularly represents respondents in lawyer regulation cases; and select the referees upon review of the panel’s merit recommendations.

Explain how the proposal is likely to have a “beneficial fiscal impact” as stated in the Supporting Memorandum.

The beneficial fiscal impact is reduced litigation costs. Referees with more relevant knowledge, skills, and experience in adjudicating cases will process cases more efficiently and more effectively. Referees who can dedicate themselves to this work and perform it regularly will increase their ability to process cases efficiently and effectively. Time spent by referees and counsel, and as a result, the costs per case should be reduced.

Will the amendments have retroactive application?

No. The amendments should be made prospectively applicable. The Court should establish an effective date that will allow sufficient time for the Court to select the permanent referees. The amendments should apply to referee appointments made after the effective date.

How many referees are currently on the permanent panel?

Thirty-two.

What regions are they from?

A list of referees and their locations follow.

Norman C. Anderson	Madison
Linda S. Balisle	Madison
Allan Beatty	Sparta
James C. Boll	Madison
Kathleen Brady	Wauwatosa
James G. Curtis	La Crosse
John R. Decker	Evansville
Michael Francis Dubis	Waterford
Hannah C. Dugan	Milwaukee
William Eich	Madison
Judge James R. Erickson	Balsam Lake
Richard M. Esenberg	Milwaukee
Kevin L. Ferguson	Milwaukee
Henry A. Field Jr.	Madison
John A. Fiorenza	Pewaukee
Curry First	Glendale
Dennis J. Flynn	Racine
David R. Friedman	Madison
Lisa C. Goldman	Madison
Jonathan V. Goodman	Milwaukee
Stanley F. Hack	Mequon
Russell L. Hanson	Westby
Daniel L. Icenogle	Readstown
Robert E. Kinney	Rhineland
James W. Mohr	Hartford
James B. Murphy	Waunakee
Richard Ninneman	Milwaukee
Kim M. Peterson	Oconomowoc
John N. Schweitzer	Madison
Christine Harris Taylor	Milwaukee
Cheryl Rosen Weston	Madison
James T. Winiarski	Milwaukee

How many of these referees have been appointed in the past three years?

During the past three years, all thirty-two have been appointed to review at least one consent reprimand pursuant to SCR 22.09. Twenty-two have been appointed to at least one lawyer regulation case.

How much time, on average, does a referee invest in a disciplinary case?

For disciplinary cases referees completed in fiscal year 2013, the average time spent was approximately 44 hours per case.

What are the average fees and costs reported by referees?

For disciplinary cases referees completed in fiscal year 2013, the average referee fee was approximately \$2,500 per case, and average costs were \$74 per case.