

June 12, 2019

Donald J. Christl  
Direct Dial: 414-351-0287  
dchristl@reinhartlaw.com

SENT BY E-MAIL

Julie A. Rich, Court Commissioner  
Wisconsin Supreme Court  
110 East Main Street, Suite 440  
Madison, WI 53703

Dear Ms. Rich:

Re: Petitions 19-04 and -05

I include in this transmission the Board's letter to the Court plus a one-page table comparing the Board's proposals to the proposals contained in the subject Petitions.

In the hearing, Judge Ptacek mentioned the possibility that the Court approve the proposed changes in the composition and training of referees effective January 1, 2020 and defer until 2022 action on proposed changes in referee authority. Enduring all of this again two years hence would serve nobody's best interest. Thus, if the Court decides to bifurcate the effectiveness of the changes, allowing refinements in the referee corps to mature before expanding referee authority, we propose that the Court now adopt changes in the referee composition and training—SCR 21.08(1)(a), (c) and (2)—effective January 2020 and changes in referee authority—SCR 21.08(1)(b)—effective January 2022. If the enhanced referee corps does not timely meet the Justices' expectations, the Court can always rescind its action as to SCR 21.08(1)(b).

Thank you, Ms. Rich, for facilitating this communication with the Court.

Yours very truly,



41797053

cc: Mr. Joseph M. Russell  
Honorable Gerald P. Ptacek  
Ms. Jacquelynn B. Rothstein  
Mr. Keith Sellen



# Supreme Court of Wisconsin

## LAWYER REGULATION SYSTEM BOARD OF ADMINISTRATIVE OVERSIGHT

Chairperson: Attorney Joseph M. Russell, Milwaukee  
Vice Chairperson: Attorney Timothy Nixon, Green Bay

Board Members:  
Mr. Daniel C. Bruch, Hudson  
Attorney Linda U. Burke, Milwaukee  
Attorney Donald J. Christl, Milwaukee

June 12, 2019

Mr. Lawrence J. Quam, Superior  
Attorney Gary J. Van Domelen, La Crosse  
Attorney Michael Weiden, Madison

Wisconsin Supreme Court  
16 East State Capitol  
P.O. Box 1688  
Madison, WI 53701

Mr. and Mesdames Justices: Re: Petitions 19-04 and -05

Thank you for your forbearance during our presentations last Thursday. Upon reflection, we concluded that the presentations may not have responded fully to your inquiries regarding (a) the sequence of our proposals and the proposals of the Study Committee and (b) the genesis of our proposed limit on referee-imposed sanctions. With your indulgence, this letter supplements those responses.

1. Sequence.

- Timing. Pursuant to its charge in SCR 21.10(2) "to monitor the fairness, productivity, effectiveness, and efficiency of the attorney regulation system," the Board began its examination of the disciplinary process in 2015. The Study Committee first met in 2016.

Pursuant to its charge in SCR 21.10(2)(d) to "report its findings to the supreme court" and "propose for consideration by the supreme court substantive and procedural rules related to the regulation of lawyers," the Board submitted its report to you in January 2018. It delivered the proposed Referee Code of Conduct to the Study Committee in August 2018. The Study Committee submitted its report to you in October 2018 and the Petitions in March 2019.

- Substance. Our 2018 report included, among others, proposals regarding the number, selection, training and authority of referees. It also proposed a Referee Code of Conduct. A year later, Petitions 19-04 and 19-05

substantially repeated the proposals of our 2018 reports. The Petitions deviated from our 2018 report only in four, relatively minor instances. Our written comments and presentations last week focused on those four deviations.

Please note the substantial agreement between our 2018 proposals and the proposals appearing in the Petitions. (We have every reason to believe that the Study Committee developed its proposals based on its own research and analysis, independent of our report and proposals—a fact making the similarity in both sets of proposals all the more remarkable and attesting further to the validity of the joint proposals themselves.) A table accompanies this letter, highlighting the parallels and identifying the few areas of disagreement.

2. Limit on Referee-Imposed Sanctions. You inquired regarding the genesis of the Board's proposal limiting referee-imposed sanctions to license suspensions of "less than six months." We decided upon that limit as outlined below:

- The Board's examination of the disciplinary process revealed that contested matters extended an average of 43 months, longer than desirable.
- To expedite the process and achieve greater judicial economy, the Board concluded that certain lesser disciplinary matters did not merit Supreme Court involvement.
- Such a conclusion required identification of the appropriate agency to dispose of those matters.
- The Board's review had already generated proposals of developing a more exclusive and better trained referee corps. In light of those proposals and the already extraordinarily high correlation between referee recommendations and the Court's holdings—100% as to findings of misconduct and over 90% as to the sanctions imposed—the Board concluded that, rather than creating a new entity for this purpose, the Court authorize referees to dispose of lesser matters.
- The issue remained of defining "lesser" in this context. After considering various approaches, the Board selected the severity of the sanctions merited as the measure for distinguishing lesser violations from those more serious.
- Rather than creating a new, arbitrary distinction of lesser versus serious in this context, the Board searched the Rules to identify a standard the Court had already used to differentiate lesser sanctions from those more serious.

- We discovered, in SCR 22.28(2) and (3), that the Court had identified license suspensions of "less than six months" as lacking the seriousness of requiring hearings for reinstatement.
- Respecting the Court's judgment, the Board incorporated verbatim the standard you had already used and our 2018 report proposed that referee authority extend to sanctions no more severe than license suspensions of "less than six months."

In all, our 2018 report anticipated the substance of every concept proposed by the Petitions and discussed in the recent hearing. The Board developed these proposals to expedite the disciplinary process and, in so doing, to conserve the state's most valuable judicial resource, the time and attention of the Court. We, thus, we urge you to adopt the proposals appearing in both Petitions with the minor revisions highlighted in the Board's written and oral comments.

Thank you again for your forbearance.

Respectfully submitted,

Board of Administrative Oversight

By:   
Joseph M. Russell, Chair

By:   
Donald J. Christl, Committee Chair

41783049

cc Hon. Gerald P. Ptacek  
Ms. Jacquelynn B. Rothstein  
Mr. Keith Sellen

## Comparison of Board's 2018 Proposals and Petitions 19-04 and 19-05

The Board's 2018 report and the Petitions agree on every proposal submitted with only four exceptions regarding the details thereof, as noted below:

1. Need to reduce size of referee corps—Agree.

Deviation: Our 2018 report proposed a limit of 12 referees; petition 19-04 proposes a limit of not more than 24.

2. Need for referee training—Agree.

3. Need for periodic evaluation and reappointment of referees—Agree.

4. Need for Referee Code of Conduct—the Board proposed one; the Study

Committee did not address it.

5. Need for referee authority to issue public and private reprimands—Agree.

6. Need for referee authority to impose license suspensions—Agree.

Deviation: Our 2018 report proposes limiting the authority to suspensions of "less than six months"; Petition 19-05 proposes limiting the authority to suspensions of no longer than three months.

7. Need for referee authority to ratify stipulated sanctions—Agree.

Deviation: In light of agreement to each stipulated sanction by the director, the respondent attorney and the respondent attorney's counsel, our 2018 report proposes no limit on the sanctions subject to referee ratification; Petition 19-05 proposes limiting the sanctions subject to referee ratification to license suspensions for one year or less.