

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

PETITION

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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 Louis B. Butler

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

The Petitioner, Keith L. Sellen, Director of the Office of Lawyer Regulation, hereby petitions the Supreme Court of Wisconsin for an order that amends Supreme Court Rule 22.001(3) relating to the definition of costs in the Lawyer Regulation System as follows.

PROPOSED AMENDMENT

**SCR 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.

#### JUSTIFICATION

On April 2, 2004, the agenda for the Supreme Court's annual open meeting with the components of the Lawyer Regulation System, which it conducts pursuant to Supreme Court Rule 21.09, included a discussion about the appropriateness of cost assessments in disciplinary cases.

Since the meeting, the Office of Lawyer Regulation, Board of Administrative Oversight, and State Bar Lawyer Regulation System Study Committee have discussed proposals to improve upon the present method.

The petitioner proposes that costs related to hourly fees of counsel for the office of lawyer regulation would no longer be assessed against respondents in disciplinary cases. All other costs would continue to be assessed.

Cost assessment data for fiscal years 1999 through 2003 shows the average annual costs assessed by the Court to be approximately \$86,000.00, of which an average of approximately \$55,000.00 relates to fees of counsel for the office of lawyer regulation. Actual collections of costs during these years averaged approximately \$74,000.00. Proportionally, approximately \$47,000.00 of annual collected costs would relate to fees of counsel for the office of lawyer regulation. The result of the rule change would be an average increase in the annual dues assessment of approximately \$3.00 per dues paying attorney. For the next two fiscal years, the average increase would probably exceed \$3.00 due to a temporary increase in litigation. Nevertheless, the amount should return to \$3.00 for the long term.

A good method for assessing costs should allocate the cost of enforcement fairly between members of the profession and the respondent attorney, and should neither detract from the determination of truth nor require significant effort or expense in its application. The rule change would adopt the American practice: each litigant pays its own attorneys' fees. In addition to adopting the American practice, the rule change would reduce any

disincentive to presenting a defense, and the effort and expense in its application.

Respectfully submitted this \_\_\_\_ day of \_\_\_\_\_, 2005.

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Keith L. Sellen  
Director  
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State Bar No. 1001088