

SUPPORTING MEMORANDUM In the
Matter of the Petition For
Amendment to the Rules Relating
To Referees in the Lawyer
Regulation System

TO: Chief Justice Shirley S. Abrahamson
Justice Ann Walsh Bradley
Justice N. Patrick Crooks
Justice David T. Prosser, Jr.
Justice Patience D. Roggensack
Justice Annette Kingsland Ziegler
Justice Michael J. Gableman

Filed with the Clerk of Court Diane Fremgen
Clerk of Supreme Court
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The Board of Administrative Oversight (BAO), State Bar of Wisconsin, and Office of Lawyer Regulation (OLR) provide the following memorandum in support of the petition to amend the rules relating to referees in the lawyer regulation system.

In 2011, a study of the lawyer regulation system was conducted. The report of the study committee, dated February 2012, recommended "reserve Judges as referees rather than attorneys who may not be as familiar with the litigation process." Disciplinary proceedings are conducted

pursuant to the rules of civil procedure and rules of evidence. SCR 22.16 (1). Judges have the most relevant experience conducting proceedings pursuant to these rules, making findings of fact and conclusions of law, and serving as neutral and detached magistrates. Reserve Judges would therefore be best suited to conduct proceedings in a fair and efficient manner, to most effectively make findings of fact and conclusions of law, and to be perceived by the public as neutral and detached.

Petitioners recognize that attorneys are also properly qualified to be referees, provided they have substantial judicial or litigation experience. For this reason, the petition proposes that attorneys who have such experience also be appointed.

Petitioners recommend that the Supreme Court rely on a small number of referees. Relying on a small number provides advantages of quality, efficiency, and uniform application of disciplinary standards and procedures. To this end, petitioners propose that the Supreme Court appoint no more than four to serve on a permanent panel of referees, and that the Supreme Court assign all matters to one of those four to the extent they are available. The Supreme Court should also appoint referees to an auxiliary

panel for assignments only when no member of the permanent panel is available.

The adjudicative experience of Reserve Judges and attorneys with substantial judicial or litigation experience, and the standardization achieved by relying on a smaller number is expected to result in a more efficient litigation process and Supreme Court review process. Petitioners do not expect any adverse fiscal impact. To the contrary, the proposed rule is expected to have a beneficial fiscal impact.

Finally, petitioners propose deleting the last clause of SCR 21.08(1), as SCR 22.07(4) and SCR 22.08 no longer provide for referee review of preliminary review panel determinations.

Petitioners do not believe there are any related petitions pending before the Court.

Respectfully submitted this ___ day of _____, 2013.

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