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August 28, 2015

Wisconsin Supreme Court
Attention: Commissioner Julie Rich
P.O. Box 1688
Madison, WI 53701

Re: Comment regarding Supreme Court Petition 14-06

I support of Petition 14-06, which is aimed at giving OLR more discretion to resolve de minimus matters efficiently. I write on my own behalf, not on behalf of any organization. Nevertheless my comments are informed by my experiences as an OLR district committee investigator for 8 years and as a lawyer for 24 years.

Among other things, Petition 14-06 proposes amending SCR 22.25(3) and (4) regarding misconduct and malfeasance by lawyer regulation participants. I support those amendments, but I think that other aspects of SCR 22.25 also merit scrutiny and possible amendment. Specifically, SCR 22.25(1) states that allegations of misconduct against a lawyer member of a district committee “shall be assigned by the director to a special investigator.” The rule’s use of the word “shall” suggests that the director must refer the grievance out—even when it is clear that the grievance has no merit. I wonder whether depriving the director of all discretion in this situation makes sense. I also suggest amending SCR 22.25(4) by imposing a 90-day deadline for special investigators to prepare and submit their investigative reports.

My suggestions stem from a matter that I observed firsthand. A person filed a grievance against an attorney member of an OLR district committee. Per SCR 22.25(1), OLR immediately referred the grievance to a special investigator before giving the attorney an opportunity to respond. The attorney’s explanation was simple. Assuming all of the facts that the grievance alleged were true, a statute authorized the attorney to take the very action complained of. The grievance then sat with the special investigator for 19 months, despite numerous inquiries by the attorney and the Director of OLR. After all that time, the special investigator dismissed the grievance with a form letter.

SCR 22.25 serves the important purpose of ensuring that lawyers who volunteer for OLR do not receive special treatment when they are the subject of a grievance. However, automatically referring all grievances against volunteer attorneys to special investigators may not be an efficient use of resources. The attorney’s response could identify a simple mistake or highlight information that might render the referral

unnecessary. Furthermore, SCR 22.04(3) requires a *district committee* investigator to conduct an investigation and file a report within 90 days. SCR 22.25(4) imposes no such deadline on a *special* investigator. It seems the rule should be amended to include one.

Thank you for the opportunity to comment on Petition 14-06. I hope that the supreme court adopts the petition's suggestions and also amends SCR 22.25 along the lines described in this letter. Doing so will advance the petition's goal of giving OLR the discretion necessary to resolve de minimus matters quickly.

Sincerely,

Colleen D. Ball