



Supreme Court of Wisconsin

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October 21, 2013

Supreme Court of Wisconsin
Attn: Deputy Clerk – Rules

Re: Rule Petition 13-04 (referees)

Chief Justice and Justices:

I have litigated, or assigned and supervised, roughly 800 publicly-filed lawyer regulation discipline, medical incapacity and reinstatement cases in Wisconsin – i.e., every single case filed in the past 17 years. I just concluded eight years of board service for a national organization of discipline and ethics counsel that regularly interacts with national groups of discipline adjudicators and respondents' counsel. I am out of state on October 25th, and therefore write with some opinions, observations and thoughts on the referee petition.

1. The Court's current 32 referee panel does a good job. Each referee is dedicated and fair in performing tough work at a practically pro bono rate (currently \$56.20/hr).
2. Some referees understand the rules and procedures better than others. Some referees are clearly better at managing litigation than others.
3. Regularly using fewer referees will provide increased efficiencies over the current system, if those referees are dedicated to (i.e., have the time for or are contracted to perform) the work. It will assist the Court and its Commissioners in processing cases. I believe it could also enhance public confidence in the Court's lawyer regulation system.
5. It should mean something that this is a *joint* petition filed by this Court's Board of Administrative Oversight, OLR's Director and by the State Bar of Wisconsin. The Board of Governors supported it. Respondent's counsel who have weighed in seem to favor the concept.

5. Don't get hung up on the fiscal impact issue. The petition's goal is not to save money. In most cases, using the proposed system versus the existing system will not significantly affect the costs of a proceeding. It will not significantly increase referee travel costs. For one, 40% of current cases already involve a referee more than 50 miles from the respondent. Besides, referee travel costs are negligible in the grand scheme – in 2013, average referee expenses (including travel) were only \$74/case. Further, if you buy into the assumption that the core referees will, on the whole, better manage litigation, it could in some cases save a boatload of expenses -- for example, each extra day of hearing that might be saved through judicial management will negate \$1500+ in daily hearing costs (referee, OLR counsel, court reporter).

6. That there are details to be worked out should not derail the good core idea of regularly using a select small grouping of referees. Specifics such as the optimal number of core referees (2? 4? 6? “no less than a dozen”?); how the contracts and caseloads would be managed; and the need to limit contractual obligations to less than X hours to avoid human resource or tax consequences, are issues you can discuss, debate and decide.

7. You need a knowledgeable, sanitary process to select exemplary core referees, but it does not need to look like what is proposed by the petitioners.

8. Tangentially:

(a) The concept of reducing the primary referee panel to achieve processing efficiencies is not new. During a lunch with the Court years ago, I discussed with you my opinion that the most effective efficiency measure to implement for litigated cases would be for the Court to employ one or two presiding disciplinary judges as a separate agency/entity or as part of the Commissioner's office, and provide staff support. That hasn't changed. However, this will not occur soon or perhaps ever, primarily for budgetary reasons. Also, conceivably, some constituencies may view it as losing a degree of external participation, control or oversight.

(b) I was surprised by some content in the three Commissioners' memo, and glad that Keith and I thereafter briefly met with them to clarify information.

(c) Attorney Dietrich's proposed sea change to allow substitution rights to only one side in civil litigation merits separate consideration. It absolutely should not be shoehorned into the instant petition.

Respectfully submitted,



WILLIAM J. WEIGEL
Litigation Counsel