

SUPREME COURT OF WISCONSIN

NOTICE

This order is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 13-06

In the matter of the Petition to Amend Supreme Court Rule 22.12 Relating to Stipulations in Lawyer Disciplinary Proceedings.

FILED**JUL 3, 2014**

Diane M. Fremgen
Clerk of Supreme Court
Madison, WI

On June 12, 2013, the Office of Lawyer Regulation (OLR) by its Director, Keith Sellen, filed this rule petition. The petition asks the court to amend Supreme Court Rule (SCR) 22.12 relating to its consideration of stipulations submitted in lawyer disciplinary proceedings. Specifically, the OLR asks the court to amend SCR 22.12 to authorize issuance of an order to show cause when the court declines to accept a stipulation.

The court discussed the matter at open rules conference on September 12, 2013, and agreed it would discuss and potentially decide the matter without a public hearing following solicitation of public comment. In addition to the standard distribution list, the court requested input from the supreme court commissioners, current referees in the lawyer regulation system, and attorneys representing respondents in OLR matters. The letter to interested parties was sent October 6, 2013. On October 23, 2013, Attorney John Nicholas

Schweitzer filed a letter supporting the petition. On November 8, 2013, the supreme court commissioners filed a memo supporting the petition and offering a friendly amendment to the OLR's proposal. The OLR advised the commissioners by e-mail that it is agreeable to the proposed change. No further comments were received.

The court again discussed this petition at its open rules conference on May 27, 2014. First, the court voted unanimously to decide the matter without a public hearing. The court then discussed the petition. Chief Justice Shirley S. Abrahamson and Justice Ann Walsh Bradley each indicated they thought the petition required revision to clarify an alternative not directly addressed: the appropriate procedure in the event the OLR and the respondent cannot reach agreement after a stipulation is returned by this court with proposed modifications or other suggestions. Justice Bradley indicated she thought the court should have more discretion under the rule to modify terms of a pending stipulation. After some discussion, the court then voted 6:1 (Justice Bradley dissenting) to adopt the petition, re-drafted to address the alternative scenario identified by the Chief Justice and Justice Bradley. Therefore,

IT IS ORDERED that Supreme Court Rule 22.12 (1) is amended as follows:

SCR 22.12 **(1)** The director may file with the complaint a stipulation of the director and the respondent to the facts, conclusions of law regarding misconduct, and discipline to be imposed. The supreme court may consider the complaint and stipulation without the appointment of a referee, in which case the supreme court may approve the stipulation, reject the stipulation, or

direct the parties to consider specific modifications to the stipulation.

IT IS FURTHER ORDERED that Supreme Court Rule 22.12 (3) is amended as follows:

SCR 22.12 **(3)** If the supreme court rejects ~~the~~ a stipulation, a referee shall be appointed and the matter shall proceed as a complaint filed without a stipulation.

IT IS FURTHER ORDERED that Supreme Court Rule 22.12 (3m) is created as follows:

SCR 22.12 **(3m)** If the supreme court directs the parties to consider specific modifications to the stipulation, the parties may, within 20 days of the date of the order, file a revised stipulation, in which case the supreme court may approve the revised stipulation, adopt the stipulated facts and conclusions of law, and impose the stipulated discipline. If the parties do not file a revised stipulation within 20 days of the date of the order, a referee shall be appointed and the matter shall proceed as a complaint filed without a stipulation.

IT IS FURTHER ORDERED that these amendments shall be effective as of the date of this order and shall apply to SCR 22.12 stipulations filed or pending on or after the date of this order.

IT IS FURTHER ORDERED that notice of these amendments of Supreme Court Rule 22.12 be given by a single publication of a copy of this order in the official publications designated in SCR 80.01, including the official publishers' online databases, and on the Wisconsin court system's web site. The State Bar of Wisconsin shall provide notice of this order.

Dated at Madison, Wisconsin, this 3rd day of July, 2014.

BY THE COURT:

Diane M. Fremgen
Clerk of Supreme Court

