

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. 13-04

**In the matter of the Petition to Amend Rules
Relating to Referees in the Lawyer Regulation
System**

FILED

JUL 6, 2015

Diane M. Fremgen
Clerk of Supreme Court
Madison, WI

On May 22, 2013, Kevin Klein, State Bar President, Rod Rogahn, Board of Administrative Oversight Chairperson, and Keith Sellen, Office of Lawyer Regulation (OLR) Director, filed a petition requesting that the court amend Supreme Court Rule (SCR) 21.08(1) relating to referees in the lawyer regulation system. The petition proposed, inter alia, that the court establish a permanent panel of no more than four attorneys and reserve judges to serve as referees in all disciplinary proceedings under SCR Chapter 22.

On Friday, October 25, 2013, the court conducted a lengthy public hearing on the petition. Keith Sellen presented the petition. Attorney Dean Dietrich, Attorney John Nicholas Schweitzer, the Honorable Robert Kinney, and the Honorable John B. Murphy appeared and commented on the petition. The court also received and considered a number of written comments.

At the ensuing open administrative rules conference, the court granted the petition in part, approving deletion of certain obsolete language in SCR 21.08(1), because SCR 22.07(4) and SCR 22.08 no longer provide for referee review of preliminary review panel determinations. The court voted unanimously to deny the remainder of the proposed changes set forth in rule petition 13-04. The court then engaged in a discussion of other issues raised during the public hearing, including whether a comprehensive review of the OLR was warranted, but reached no consensus on whether to formally initiate a review of the OLR. After some further discussion, the court held rule petition 13-04 and proceeded to discuss other matters on the court's agenda. The court discussed and approved this order in open administrative rules conference on February 26, 2015.

IT IS ORDERED that, effective the date of this order, 21.08 (1) of the Supreme Court Rules is amended as follows:

SCR 21.08 **(1)** Members of a permanent panel of attorneys and reserve judges appointed by the supreme court shall serve as referees to conduct hearings on complaints of attorney misconduct, petitions alleging attorney medical incapacity, and petitions for license reinstatement, to make findings, conclusions and recommendations and submit them to the supreme court for review and appropriate action, and to review consensual discipline under SCR 22.09, ~~and to review determinations of the preliminary review panels under SCR 22.07(4) that the director has failed to establish cause to proceed in a matter.~~

IT IS FURTHER ORDERED that notice of this amendment of SCR 21.08(1) 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.

IT IS FURTHER ORDERED that the remainder of the proposed changes set forth in Rule Petition 13-04 are denied.

Dated at Madison, Wisconsin, this 6th day of July, 2015.

BY THE COURT:

Diane M. Fremgen
Clerk of Supreme Court

¶1 SHIRLEY S. ABRAHAMSON, J. (*concurring*). I join the order. I write separately because the procedural summary in the order is incomplete. The following completes the narrative.

¶2 The court conducted a lengthy public hearing on this matter on October 25, 2013 and quickly reached a unanimous decision on the merits. The petition was then held for more than a year and a half. The order offers no explanation for the long hold. Here is the explanation.

¶3 After reaching our decision the court then discussed at some length whether a comprehensive review of the lawyer disciplinary system is warranted. We did not reach a decision that day on the comprehensive review issue, and Rule Petition 13-04 was held.

¶4 On February 6, 2015, I filed Rule Petition 15-01 to create supreme court rules providing for a Lawyer Regulation Committee to review the Rules of Professional Conduct for Attorneys (chapters 20 and 22 of the supreme court rules) and the organization, operation, and procedures of the lawyer discipline system, including the OLR, District Committees, Preliminary Review Committee, Referees, and Board of Administrative Oversight, and to create a Lawyer Regulation Review Committee. The court unanimously agreed to conduct a public hearing on Rule Petition 15-01 in the fall of 2015. The formal proposal for a comprehensive review of the lawyer regulation system obviates the need to continue to hold this matter. The subject of this rule petition can be a subject of

study for the Lawyer Regulation Committee, if my Rule Petition 15-01 is adopted.

