

**SUPREME COURT OF WISCONSIN**

## NOTICE

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No. 05-01B

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**In the matter of review of amendments to  
Supreme Court Rules relating to Cost  
Assessments in the Lawyer Regulation System.**

**FILED****JUL 6, 2011**

A. John Voelker  
Acting Clerk of Supreme  
Court  
Madison, WI

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On May 1, 2006, this court issued an order amending the rules relating to the assessment of costs in lawyer disciplinary proceedings effective July 1, 2006. See S. Ct. Order 05-01, 2006 WI 34 (dated May 1, 2006; eff. Jul. 1, 2006). The order provided that the amendments would expire on December 31, 2008, unless the court took further action. On December 1, 2008, the court issued an order ruling it was appropriate for the amendments to continue in effect until further order of this court and stating that the court would conduct a public hearing on the amendments prior to December 31, 2010.

On Monday, October 4, 2010, the court conducted a public hearing on the amendments. Attorney Dean Dietrich appeared on behalf of the State Bar of Wisconsin and requested the court revise the rules to permit referees to make recommendations regarding costs. Attorney William J. Weigel appeared on behalf of the Office of Lawyer

Regulation (OLR) and recommended retaining the rules adopted in 2006. Attorney Daniel L. Shneidman also appeared and presented, *inter alia*, issues of particular concern to solo and small firm practitioners.

At the ensuing open administrative conference the court discussed the 2006 amendments and the State Bar recommendation. The majority of the court voted: (1) to amend the rules relating to cost assessments to provide that a referee may make a recommendation to the court regarding costs to be assessed against the respondent; (2) to delete the reference to "extraordinary circumstances" in the provision permitting the court, in its discretion, to reduce costs if warranted by the facts of the case; and (3) to retain the specific criteria in the current rule rather than adopting the criteria submitted by the State Bar. (C.J. Abrahamson, J. Bradley, and J. Crooks dissenting). At its open administrative conference on January 12, 2011, the court reviewed a draft order prepared by court staff with input from the OLR and authorized court staff to seek review of the proposed language from Attorney Dean Dietrich on behalf of the State Bar. In February 2011 Attorney Dietrich advised court staff that the proposed changes were acceptable. A working draft of the proposed rule change was posted to the court's Web site.

Therefore,

IT IS ORDERED that the Supreme Court Rules are modified effective January 1, 2012, as set forth herein:

**SECTION 1.** 22.16 (7) of the Supreme Court Rules is created to read:

22.16 (7) The referee shall file with the supreme court a recommendation as to the assessment of reasonable costs within 10 days after the parties' submissions regarding assessment of costs.

**SECTION 2.** The following Comment to SCR 22.16 (7) is created to read:

Comment

The court's general policy regarding assessment of costs in lawyer disciplinary matters is set forth in SCR 22.24.

Procedures for filing the statement on costs and objecting to a statement on costs are set forth in SCR 22.24 (2).

If the respondent does not object to the statement of costs then the referee's recommendation regarding costs shall be filed within 10 days of the deadline for filing an objection. If an objection is filed the recommendation shall be filed within 10 days after receiving the OLR's reply to the objection.

**SECTION 3.** 22.24 (1m) (intro) of the Supreme Court Rules is amended to read:

22.24 (1m) The court's general policy is that upon a finding of misconduct it is appropriate to impose all costs, including the expenses of counsel for the office of lawyer regulation, upon the respondent. In some cases ~~involving extraordinary circumstances~~ the court may, in the exercise of its discretion, reduce the amount of costs imposed upon a respondent. In exercising its discretion regarding the assessment of costs, the court will consider the submissions of the parties statement of costs, any objection and reply, the recommendation of the referee, and all of the following factors:

**SECTION 3.** 22.24 (2) of the Supreme Court Rules is amended as follows:

22.24 (2) In seeking the assessment of costs by the supreme court, the director shall file in the court, with a copy to the referee and the respondent, a statement of costs within 20 days after the filing of the referee's report or a SCR 22.12 or 22.34 (10) stipulation, together with a recommendation ~~to the court~~ regarding the costs to be assessed against the respondent. If an appeal of the referee's report is filed or the supreme court orders briefs to be filed in response to the referee's report, a supplemental statement of costs and recommendation regarding the assessment of costs shall be filed within 14 days after the appeal is assigned for submission to the court or the briefs ordered by the court are filed. The recommendation should explain why the particular amount of costs is being sought. ~~Objection to a statement of costs [which may include relevant supporting documentation] shall be filed by motion within 21 days after service of the statement of costs. A respondent who objects to a statement of costs must explain, with specificity, the reasons for the objection and must state what he or she considers to be a reasonable amount of costs.~~ The respondent may file an objection to the statement of costs and recommendation within 21 days after service of the statement of costs. A respondent who objects to a statement of costs must explain, with specificity, the reasons for the objection and must state what he or she considers to be a reasonable amount of costs. The objection may include relevant supporting documentation. The office of lawyer regulation may reply within 11 days of receiving the objection.

In proceedings before a referee the referee shall make a recommendation to the court regarding costs. The referee should explain the recommendation addressing the factors set forth in SCR 22.24 (1m). The referee shall consider the submissions of the parties and the record in the proceeding. No further discovery or hearing is authorized.

Chief Justice Shirley S. Abrahamson, Justice Ann Walsh Bradley, and Justice N. Patrick Crooks dissent from the court's decision.

IT IS FURTHER ORDERED that this order shall apply prospectively to disciplinary proceedings, medical incapacity proceedings, or reinstatement proceedings filed on or after January 1, 2012.

IT IS FURTHER ORDERED that the Comment to SCR 22.16 (7) is not adopted, but will be published and may be consulted for guidance in interpreting and applying SCR 22.16 (7).

IT IS FURTHER ORDERED that notice of this amendment of Supreme Court Rules 22.16 and 22.24 be given by a single publication of a copy of this order in the official state newspaper and in an official publication of the State Bar of Wisconsin.

Dated at Madison, Wisconsin, this 6th day of July, 2011.

BY THE COURT:

A. John Voelker  
Acting Clerk of Supreme Court

