

Cullen
Weston
Pines
& Bach

A Limited Liability
Partnership

Attorneys at Law

122 West Washington Avenue
Suite 900
Madison, Wisconsin 53703
(608) 251-0101
(608) 251-2883 Fax
www.cwpb.com

Hon.. Cornelia G. Clark, Clerk
Supreme Court of Wisconsin
110 East Main Street, Suite 215
P.O. Box 1688
Madison, WI 53701-1688

Re: November 14th Hearing on Petition 05-01

Dear Ms. Clark,

I write with respect to the Court's hearing on the petition concerning imposition of costs and fees in OLR cases scheduled for November 14, as I will be unable to attend.

As one who has had the honor of serving as a Referee in attorney disciplinary proceedings for twenty years, I am pleased that the Court is directing its attention to this troublesome matter. I believe the problem comes up more often than statistics suggest, as the Court's current practice is well known. So, in the 13% of cases noted by Justice Abrahamson in *Konnor*, where the Respondent prevails on some, but not all counts, I typically think to myself, when writing a Report and Recommendation, why bother to even raise the issue? But since your Notice of Hearing invites comment, I share my distress at this long-standing practice of the Court.

The goal of our legal system, including attorney disciplinary proceedings must be fairness. As things stand at present when a respondent prevails on all counts, each party bears his or her

own costs and fees; when OLR prevails on all counts, the loser pays the winner's costs and fees. But when the respondent prevails on SOME counts, the winner pays the loser's costs and fees. I do not understand why the court thinks this is fair. In reality costs and fees function as a part of the sanction. If the conduct does not warrant a sanction why are we imposing these penalties?

Referees are required to keep time records in OLR cases, as we are paid on an hourly basis; I believe that OLR allocates the time of Attorneys assigned to prosecute these matters, so determining the allocation of hours to counts would not be especially difficult. If any attorney is charged with misconduct, and the allegation is not sustained under the procedures this court has adopted in SCR 22, I do not see the basis for the respondent to

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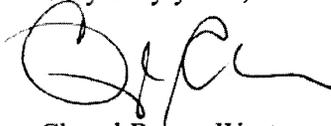
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Of Counsel:
Cheryl Rosen Weston

pay a greater percentage for the administration of the system than any other member of the bar.

I express no opinion as to whether or not Referees should be reviewing fees for reasonableness. Certainly, where fee shifting is permitted, the review of an allegedly unreasonable fee should be take place somewhere in the process. However, I have no sense as to whether this is a common concern. Writing a Report at the conclusion of an OLR hearing that an Attorney's action does not violate the Rules of Professional Conduct for Attorneys and then assigning them responsibility for paying those who prosecuted the unsuccessful claim against them is. If we are to continue to assign the payment of costs and fees to attorney-respondents who prevail, the system would be well-served if the rationale were clearly explained.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Cheryl Rosen Weston', written over a horizontal line.

Cheryl Rosen Weston
State Bar No 01014228