

Memorandum

SUPREME COURT OF WISCONSIN  
COMMISSIONERS OFFICE  
**RECEIVED**



DATE: November 8, 2013  
TO: Wisconsin Supreme Court  
Attention: Deputy Clerk - Rules  
FROM: Supreme Court Commissioners Nancy A. Kopp, David W. Runke, and Mark A. Neuser<sup>1</sup>  
SUBJECT: Rule Petition 13-06 Petition to Amend SCR 22.12 Relating to Stipulations in Lawyer Disciplinary Proceedings

NOV - 8 2013

CLERK OF SUPREME COURT  
OF WISCONSIN

The Supreme Court Commissioners assist the court by analyzing and reporting attorney regulatory matters to the court as part of its consideration of the matter. We support the Office of Lawyer Regulation's (OLR) petition to amend SCR 22.12 relating to stipulations, but offer a friendly amendment.

As the OLR points out in its supporting memorandum, the current language in SCR 22.12 provides that the supreme court may either (1) approve a stipulation or (2) reject it and appoint a referee to proceed on the complaint as if no stipulation had been filed. The OLR's proposed amendment would add a middle ground whereby the court could ask the parties if they would be willing to agree to modify the stipulation. The commissioners agree that if parties agree to a modification, significant time and expense could be saved.

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<sup>1</sup> Because Commissioner Julie A. Rich is directly assisting the court with Rule Petition 13-06, she has not been asked to sign onto this memorandum.

To conform the rule to the court's existing practice, the commissioners suggest changing the proposed language to indicate that the court may issue an order asking the parties about their willingness to modify their stipulation while the court is still considering whether to approve or reject the stipulation. In past situations, the court has not rejected the stipulation before it has issued an order why some part of the stipulation (e.g. the proposed sanction) should not be modified. On the other hand, rejecting the stipulation would seem to end the matter. We have prepared a revised draft of SCR 22.12 showing how we would recommend revising the rule consistent with the court's practice. It is attached hereto as Appendix 1.

## APPENDIX 1

### SCR 22.12 Stipulation.

(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. When considering whether to accept or reject the stipulation, the court may issue an order asking the parties why the stipulation should not be modified in some specified manner. The court shall then consider the parties' responses as to whether they consent to the modification(s) identified in the court's order.

(2) If the supreme court approves a stipulation, either as originally presented or as modified with the parties' consent pursuant to subsection (1) above, it shall adopt the stipulated facts and conclusions of law and impose the stipulated discipline.

(3) If the supreme court rejects the stipulation, either as originally presented or as modified with the parties' consent pursuant to subsection (1) above, a referee shall be appointed and the matter shall proceed as a complaint filed without a stipulation.

(4) A stipulation rejected by the supreme court has no evidentiary value and is without prejudice to the respondent's defense of the proceeding or the prosecution of the complaint.