
In the matter of amending Supreme Court Rules pertaining to referees and attorney discipline.

PETITION 19-__

PETITION OF the OLR Process Review Committee's Subcommittee on Referees FOR AN ORDER REPEALING AND RECREATING Supreme Court Rule 21.08 AND AMENDING Supreme Court Rules 21.11(4), 22.09(2), 22.13 (3), 22.16 (6), 22.25(6)(c), 22.30(1), 22.34(10), and 22.36(5).

For the reasons set forth in the accompanying supporting memorandum, the OLR Process Review Committee's Subcommittee on Referees petitions the Supreme Court to create and amend certain Supreme Court Rules affecting attorney disciplinary proceedings.

PETITION

The OLR Process Review Committee's Subcommittee on Referees respectfully requests that the Supreme Court adopt the following rule:

**Section 1. SCR 21.08 is repealed and recreated to read:
21.08 Referees.**

(1) The referee panel consists of no more than 24 lawyers and reserve judges appointed by the supreme court. Referees shall be members of the State Bar of Wisconsin in good standing. Referees serve staggered four-year terms. A referee may be reappointed to serve consecutive terms. If a referee's term ends while an assigned matter remains pending, the referee may oversee completion of the matter unless, on its own motion or on motion of the parties, the supreme court directs the appointment of a new referee.

(2) Referees function under the supervision of the supreme court.

(3) The duties of a referee are:

(a) To preside over and conduct hearings on complaints of attorney misconduct, on petitions alleging attorney medical incapacity, and on petitions for license reinstatement, and to issue orders necessary to advance the proceeding.

(b) To make written findings, conclusions, and recommendations, and to submit them to the supreme court for review and appropriate action.

(c) To review consensual discipline under SCR 22.09.

(d) To conduct hearings, make written findings, conclusions, and recommendations on other matters as the supreme court may direct.

(4) Referees shall function pursuant to the procedures set forth in SCR chapter 22.

(5) Each referee shall participate in mandatory referee training developed by the judicial education office, as follows:

(a) Each newly appointed referee shall attend the earliest one-half day new referee orientation seminar offered following his or her appointment, unless a period of extension is granted by the judicial education office, upon prior application by the referee. A referee reappointed to serve a consecutive term need not repeat the new referee orientation seminar.

(b) Each referee shall attend a one-half day referee training seminar every two years during the referee's four-year term when offered by the judicial education office.

(c) If a referee fails to comply with the mandatory referee training, the judicial education office shall advise the supreme court and the supreme court may, following notice to the referee, remove the referee from the referee panel provided in SCR 21.08.

Section 2. SCR 21.11 (4) is amended to read:

21.11 (4) ~~Staff of the supreme court shall provide formal~~ Formal training to the referees shall be provided as set forth in SCR 21.08.

Section 3. SCR 22.09 (2) is amended to read:

22.09 (2) The director shall request the appointment of a referee by providing in confidence to the clerk of the supreme court the names of the grievant and respondent, the address of the respondent's principal office, and the date of the consent agreement. The clerk or deputy clerk of the supreme court shall select a an available referee from the panel provided in SCR 21.08, based on ~~availability and geographic proximity to~~ the location of the respondent's principal office. The chief justice or, in his or her absence, the ~~senior~~ chief justice's delegee shall appoint the referee selected by the clerk or deputy clerk. The director shall submit the agreement, accompanied by the respondent's public and private disciplinary history, to the appointed referee for review and approval. The director shall send a copy of the agreement to the grievant. The grievant may submit a written response to the director within 30 days after being notified of the agreement, and the director shall submit the response to the referee. The respondent and the director may submit comments to the referee regarding the grievant's response. The agreement, the grievant's response, and the comments of the respondent and director shall be considered by the referee in confidence.

Section 4. SCR 22.13 (3) is amended to read:

22.13 (3) Except as provided in SCR 22.12, upon receipt of proof of service of the complaint, the clerk or deputy clerk of the supreme court shall select a an available referee from the panel provided in SCR 21.08, based on ~~the availability and geographic proximity to~~ the location of the respondent's principal office, ~~and~~ The chief justice or, in his or her absence, the ~~senior~~ chief justice's delegee shall issue an order appointing the referee selected by the clerk or deputy clerk to conduct a hearing on the complaint.

Section 5. SCR 22.16 (6) is amended to read:

22.16 (6) Within 30 days after the conclusion of the hearing, ~~or~~ the filing of the hearing transcript, or the filing of a final post-hearing brief, whichever is later, the referee shall file with the supreme court a report setting forth findings of fact, conclusions of law regarding the respondent's misconduct, if any, and a recommendation for dismissal of the proceeding or the

imposition of specific discipline, or a statement advising the court why the referee cannot comply with this deadline and the date by which the referee will file the report and recommendation.

Section 6. SCR 22.25 (6)(c) is amended to read:

22.25 (6)(c) The special preliminary review panel shall notify the grievant in writing that the grievant may obtain review by a referee of the panel's ~~dismissed dismissal~~ by submitting a written request to the director. ~~The~~An available referee shall be selected by the clerk or deputy clerk of the supreme court, from the panel provided in SCR 21.08, based on availability and geographic proximity to the location of the respondent's principal office, and appointed by ~~the~~ chief justice or, in his or her absence, the ~~senior chief justice's~~ delegee shall issue an order appointing the referee selected by the clerk or deputy clerk to review the dismissal. The request for review must be received within 30 days after the date of the letter notifying the grievant of the dismissal. The director may, upon a timely request by the grievant for additional time, extend the time for submission of additional information relating to the request for review. The decision of the referee affirming the dismissal or referring the matter to the special investigator for further investigation is final, and there shall be no review of the referee's decision.

Section 7. SCR 22.30 (1) is amended to read:

22.30 (1) The clerk or deputy clerk of the supreme court shall select an available referee from the panel provided in SCR 21.08, based on ~~availability and geographic proximity to the location of~~ the petitioner's place of residence, and the chief justice or, in his or her absence, the ~~senior chief justice's~~ delegee shall issue an order appointing the referee selected by the clerk or deputy clerk to conduct a hearing on the petition for reinstatement. In the case of a license suspension, the hearing shall not be held prior to the expiration of the period of suspension. Following the appointment of a referee, the parties shall file all papers and pleadings with the supreme court and serve a copy on the referee.

Section 8. SCR 22.34 (10) is amended to read:

22.34 (10) The petition may be accompanied by a stipulation of the director and the respondent to a suspension or to the imposition of conditions on the respondent's practice of law. The supreme court may consider the petition and stipulation without the appointment of a referee. If the supreme court approves the stipulation, it shall issue an order consistent with the stipulation. If the supreme court rejects the stipulation, the clerk or deputy clerk of the supreme court shall select an available referee from the panel provided in SCR 21.08, based on ~~availability and geographic proximity to the location of~~ the respondent's place of residence, ~~the~~ chief justice or, in his or her absence, the ~~senior chief justice's~~ delegee shall issue an order appointing the referee selected by the clerk or deputy clerk, and the matter shall proceed as a petition filed without a stipulation. 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 petition.

Section 9. SCR 22.36 (5) is amended to read:

22.36 (5) Following the investigation, the petition shall be submitted to a referee, ~~selected by~~ the clerk or deputy clerk of the supreme court shall select an available referee from the panel provided in SCR 21.08, based on geographic proximity to the location of the respondent's place of residence, and appointed by the chief justice or, in his or her absence, the ~~senior chief justice's~~

delegee shall issue an order appointing the referee selected by the clerk or deputy clerk to review the petition.

Respectfully submitted this ____ day of _____, 2019.

Hon. Gerald P. Ptacek, Chair, OLR Procedure Review Committee

Jacquelynn B. Rothstein, Chair, Referees' Subcommittee