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May 11, 2019

Chief Justice Patience D. Roggensack  
Justice Shirley S. Abrahamson  
Justice Ann Walsh Bradley  
Justice Annette Kingsland Ziegler  
Justice Rebecca G. Bradley  
Justice Daniel Kelly  
Justice Rebecca F. Dallet  
16 East, State Capitol  
P.O. Box 1688  
Madison, WI 53701-1688

Dear Chief Justice and Justices:

As Chair of the OLR Procedure Review Committee I wish to respond to a number of points made by the six interested parties who have responded to Rule Petitions 19-04 and 19-05. The Rule Petitions were filed on March 11, 2019 and are scheduled for public hearing on June 6, 2019.

Regarding Rule Petition 19-05, it proposes that a referee's decision would conclude the case absent the filing of an appeal with the Supreme Court for cases where a sanction of a license suspension of not more than 3 months is imposed and in stipulated cases where the sanction is a license suspension of not more than 1 year. The Board of Administrative Oversight agrees with the procedure in general but suggests that the referee's decision conclude the case where the sanction is not more than 6 months and for any stipulated matter. The State Bar of Wisconsin asks the Supreme Court to retain its authority as it relates to cases where suspensions of not more than 3 months are imposed, but agrees that stipulated cases conclude with the referee's decision.

To understand the OLR Procedure Review Committee's position it is important to understand the history of our discussions on this topic. We began by conducting a survey of other states to determine how they handle attorney discipline matters. While there is no clear majority method, we did learn that Wisconsin is one of the few states where the Supreme Court is involved in every case. As noted in our supporting memorandum, in its 2016-17 term, our Court decided 27 civil, 28 criminal, and 30 disciplinary cases. To many of us this seemed disproportionately high and caused us to discuss the role of the Court in discipline cases. The Committee decided to share this information with the Court and conducted a half-day seminar on

May 15, 2018, where different state systems were discussed and the director of the Colorado process appeared as a presenter.

With this background, the Committee developed its proposal. We defined two types of cases where the referee's decision would conclude the case, absent an appeal to the Supreme Court: 1) stipulated matters where the sanction imposed is a license suspension of not greater than 1 year; and 2) matters where suspensions of not more than 3 months are imposed. OLR provided figures showing that of the 145 cases decided between March, 2014 and March, 2018, 72 would have been decided by referees under our proposal. (34 were consensual or stipulated suspensions of not more than 1 year and 38 were cases where sanctions of license suspension for not more than 3 months.)

The Committee believes Rule Petition 19-05 provides for more efficient use of the Court's time: under the proposed Rule, cases rarely modified by the Court would conclude more quickly. This will shorten the time it takes to conclude a case, while still providing parties the right to file an appeal with the Court. It also provides an opportunity for the Court to try a different approach to this set of cases while still maintaining its current practice with more serious matters. The Rule also provides that the Court conduct a review after 2 years to determine whether it wishes to continue, modify or delete this procedure.

We believe that the BAO amendments would greatly broaden the application of the changes proposed in Rule Petition 19-05. The Committee opts to proceed more cautiously as the Court tries this new approach and then assesses its effectiveness. We believe the State Bar approach simply overlooks the reality where the set of cases defined are, in effect, now decided by referee decision.

Thank you for this opportunity to respond. If I can provide further information, please feel free to contact me. I look forward to further discussion at the public hearing on June 6, 2019.

Sincerely,



Gerald P. Ptacek

Chair and Reserve Judge

cc: Sheila Reiff, Clerk of the Supreme Court and Court of Appeals