

SUPREME COURT OF WISCONSIN

NOTICE

This order is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 20-06

In the Matter of Modification of the Emeritus Status, Penalties for Late Payment of Dues and Fees, Technical Corrections, and Continuing Education Requirements

FILED**MAR 2, 2021**

Sheila T. Reiff
Clerk of Supreme Court
Madison, WI

On October 19, 2020, Attorney Kathleen A. Brost, President, State Bar of Wisconsin, filed a rule petition asking the court to modify Supreme Court Rule (SCR) 10.03 to clarify who is an active or inactive emeritus lawyer and to clarify the scope of permitted practice for the various members. The petition would also modify SCR 31.02 pertaining to continuing legal education (CLE) requirements for emeritus lawyers.

The court discussed the rule petition on December 17, 2020 in a closed administrative rule conference. The court voted to solicit written comments and schedule a public hearing. Letters were sent to interested persons on December 22, 2020. Several written comments were received. Attorney Dean R. Dietrich, Attorney Diane S. Diel, Attorney Francis W. Deisinger, Attorney Mark G. Petri, and Justice Jon P. Wilcox all support the petition. The Board of Bar Examiners, by its Director, Jacquelynn Rothstein, opposes the petition. Mary Jo B. Hunter, Associate Judge/Judge of the Healing to Wellness Court, Ho-Chunk Nation

Trial Court, expressed concerns about the petition. The State Bar filed a response to the comments.

The court conducted a public hearing on February 24, 2021, via videoconference. Past State Bar President Jill Kastner and Attorney Dean R. Dietrich presented the petition to the court on behalf of the State Bar. Jacquelynn Rothstein, Director, spoke on behalf of the Board of Bar Examiners in opposition to the petition.

The court discussed the petition at a closed administrative conference and voted to grant the petition with certain minor modifications. Therefore,

IT IS ORDERED that, effective July 1, 2021, Supreme Court Rule 10.03 is amended as follows:

SECTION 1. Supreme Court Rule 10.03(3)(a) is amended to read:

(3) Classes of membership. (a) The members of the state bar are divided into 4 classes as follows: ~~active members, judicial members, inactive members and emeritus members.~~

1. Active Members. The class of active members includes all members of the state bar, including those designated as senior active members, except the judicial members and inactive members who are authorized to engage in the practice of law, either full-time or part-time, salaried or non-salaried, regardless of age. Commencing July 1, 2021, upon attaining age 75, an active member is designated as a "senior active member" unless a written notice requesting enrollment in a different membership class is filed.

2. Inactive Members. The class of inactive members includes those ~~persons~~ members of the state bar who are eligible for active membership ~~but are not engaged in the practice of law in this state and who have~~

filed with the ~~secretary of the association~~ state bar written notice requesting enrollment in the class of inactive members. An inactive member may not practice law in this state other than pro bono service as provided in SCR 10.03(3) (am).

3. Judicial Members. The class of judicial members includes the following persons: supreme court justices, court of appeals judges, circuit court judges, full-time circuit court commissioners, full-time municipal court judges, supreme court commissioners, court of appeals staff attorneys, federal district court judges, federal appellate court judges, federal bankruptcy judges, federal magistrate judges, federal administrative law judges, and retired justices and judges who are eligible for temporary judicial assignment and are not engaged in the practice of law. Any judicial member may elect to become an active member with all rights of active membership except to hold office as an officer or governor or to practice law.

4. Emeritus Members. The class of emeritus members includes those ~~persons~~ members who are ~~either active or inactive members in good standing but who are~~ at least 70 years of age who are in good standing and who have filed with the ~~executive director of the association~~ state bar a written notice requesting enrollment in the class of emeritus members. An emeritus member ~~has all the privileges of membership in the state bar and need not pay membership dues for the years following the year in which he or she attains the age of 70~~ may not practice law in this state other than pro bono service as provided in SCR 10.03(3) (am). Members who have enrolled in this class of membership prior to July 1, 2021 retain all the privileges of active membership including the right to practice law, and need not pay membership dues.

SECTION 2. Supreme Court Rule 10.03(3) (am) is created to read:

(3) (am) Pro bono service by inactive or emeritus members. 1. An inactive or emeritus member may provide pro bono legal services as defined in SCR 31.01(11) through a qualified pro bono program as defined in SCR 31.01(12) subject to the limitations and requirements of this subsection. A member who is providing only pro bono legal services under this subsection shall pay no additional dues, fees, or assessments than those assigned to their membership class. Each such member must comply with the conditions under 2 through 4 of this section.

2. Supervision and limitations.

a. Supervision by attorney. The member must perform all activities authorized by this chapter under the general supervision of a qualified pro bono program.

b. Without fee or expectation of a fee. The pro bono legal services must be provided without fee or expectation of a fee. The prohibition against compensation for the attorney contained in this subsection does not prevent the qualified pro bono program from reimbursing the attorney for actual expenses incurred while rendering services under this chapter or from paying continuing legal education attendance fees on behalf of the attorney. Nothing in this subsection prevents a qualified pro bono program from receiving court-awarded or statutory attorneys' fees for pro bono legal services rendered by the attorney.

3. Certification. Permission for an attorney to perform services under this subsection is effective upon filing with the state bar of Wisconsin a certification from a qualified pro bono program and the attorney stating that the attorney:

a. Is currently associated with the program and that the attorney will be practicing under the general supervision of the program;

b. Is in good standing, does not have a pending disciplinary proceeding, and has never been disbarred or had their license to practice law revoked or suspended in this state or any other jurisdiction;

c. Will only provide pro bono legal services as defined in SCR 31.01(11); and

d. Will at all times comply with the Wisconsin supreme court rules of professional conduct for attorneys set forth in Wisconsin supreme court rules chapter 20 and the rules and standards for training and conduct established by the qualified pro bono program provider which petitioned for the member's pro bono status.

4. Withdrawal of certification.

a. Withdrawal of permission to perform services. Permission to perform services under this chapter must cease immediately upon the filing with the state bar of Wisconsin of a notice either from the qualified pro bono program stating that the attorney has ceased to be associated with the program, which notice must be filed within 30 days after such association has ceased, or from the Wisconsin supreme court, in its discretion, at any time, stating that permission to perform services under this chapter has been revoked. A copy of such notice must be mailed to the attorney involved and to the qualified pro bono program.

b. Notice of withdrawal. If an attorney's certification under this chapter is withdrawn for any reason, the qualified pro bono program must immediately file a notice of such action in the official file of

each matter pending before any court or tribunal in which the attorney appeared.

SECTION 3. Supreme Court Rule 10.03(3)(b) is amended to read:

(3)(b)1. Any inactive or emeritus member in good standing who has actively practiced law in this state during the last 10 years may change his or her classification to that of an active member by filing with the ~~secretary~~ state bar a written request for transfer to the class of active members and by paying the dues required of active members.

2.a. Any inactive or emeritus member in good standing who has not actively practiced law in this state during the last 10 years may change his or her classification to that of an active member by filing with the ~~secretary~~ state bar a written request for transfer to the class of active members, paying the dues required of active members, and obtaining supreme court approval as provided in subd. 2. b.

b. Any inactive or emeritus member described in subd. 2. a. seeking to change his or her classification to that of an active member shall file a copy of his or her request for transfer to active membership with both the board of bar examiners and the office of lawyer regulation. The member shall pay \$200 each to the board of bar examiners and the office of lawyer regulation, which payment shall accompany the copy of the request. Within 90 days after receipt of the copy of the request, the board of bar examiners shall make a determination regarding compliance with continuing legal education requirements and file its finding with the clerk of the supreme court. Within 90 days after receipt of the copy of the request, the ~~director of the~~ office of lawyer regulation shall investigate the eligibility of the requestor and file a response with the clerk of the supreme court in support of or in

opposition to the request. Following receipt of the determination of the board of bar examiners and the response of the office of lawyer regulation, the supreme court shall consider and ~~approve~~ grant or ~~disapprove~~ deny the inactive or emeritus member's request for transfer to active membership.

SECTION 4. Supreme Court Rule 10.03(3) (bf) is amended to read:

(3) (bf) Any judicial member who is no longer serving in a judicial office may change his or her classification to that of an active member by filing with the ~~secretary~~ state bar a written request for transfer to the class of active members and paying the dues required of active members.

SECTION 5. Supreme Court Rule 10.03(3) (bm) is amended to read:

(3) (bm) Any inactive member in good standing may change his or her classification to that of an emeritus member if otherwise qualified to become an emeritus member provided that ~~no inactive member who has not actively practiced law in this state or in another state during the last two years may be transferred to emeritus status until the board of bar examiners certifies that the member has completed the continuing legal education requirements required for transfer to active status and the transfer is approved by the supreme court~~ the requirements of such membership class are met.

SECTION 6. Supreme Court Rule 10.03(3) (c) is amended to read:

(3) (c) No judicial, ~~or~~ inactive, or emeritus member may practice law in this state or hold office or vote in any election conducted by the state bar provided however that an inactive or emeritus member may provide pro bono legal services consistent with SCR 10.03(3) (am). ~~No~~ Subject to the exception in SCR 10.03(3) (am), no person engaged in the

practice of law in this state in his or her own behalf or as an assistant or employee of an active member of the state bar, or occupying a position, the duties of which require the giving of legal advice or service in this state, may be enrolled as an inactive or emeritus member.

SECTION 7. Supreme Court Rule 10.03(4) (a) is amended to read:

(4) (a) No individual other than an enrolled active member of the state bar may practice law in this state or in any manner purported to be authorized or qualified to practice law provided however, that an inactive or emeritus member may provide pro bono legal services consistent with SCR 10.03(3) (am).

SECTION 8. Supreme Court Rule 10.03(5) (a) is amended to read:

(5) Membership dues and reduction of dues for certain activities.
 (a) The annual membership dues for state bar operations for an active member shall be established as provided herein. Other classes of members shall pay the fraction of the dues of an active member as follows: Supreme Court Justices, the full amount; judicial members, two-thirds; senior active members, one-half effective in the year the member attains the age of 75; inactive members, one-half; judicial members, ~~two-thirds~~ emeritus members, none; and members admitted to practice for 3 years or less, one-half. For purposes of determining an active member's dues status based on the number of years admitted, there shall be no proration based on the exact month and year of admission. A fiscal year for which any dues are required to be paid under Bylaw 1, Section 2 shall count as a full year and a fiscal year for which no dues payment is required shall not count as a year. A change in the dues of an active member for state bar operations may be made by the

board of governors or as set forth herein. The state bar shall include in the dues statement each year the amount necessary to pay the costs of the ~~Lawyer Regulation System and of~~ office of lawyer regulation, the continuing legal education functions of the ~~Board of Bar Examiners~~ board of bar examiners, as approved the Wisconsin lawyers' fund for client protection, and such other fees as ordered by the ~~Supreme Court~~ supreme court. Judicial members other than Supreme Court Justices are not liable to pay the portion for the costs of ~~these boards,~~ as reflected ~~in the dues statement~~ the office of lawyer regulation and the board of bar examiners. The state bar shall also include in the dues statement each year an assessment to support the public interest legal services fund, as approved by the supreme court. The state bar shall show separately on its annual dues statement the portion of the total dues for state bar operations, ~~the assessments for~~ and each of the ~~boards~~ charges and ~~other assessments imposed by the supreme court~~ referred to above.

SECTION 9. Supreme Court Rule 10.03(5)(b)1. is amended to read:

(5)(b)1. The ~~State Bar~~ state bar may engage in and fund any activity that is reasonably intended for the purposes of the association set forth in SCR 10.02(2). The ~~State Bar~~ state bar may not use the compulsory dues of any member who objects pursuant to SCR 10.03(5)(b)3. for activities that are not necessarily or reasonably related to the purposes of regulating the legal profession or improving the quality of legal services. Expenditures that are not necessarily or reasonably related to the purposes of regulating the legal profession or improving the quality of legal services may be funded only with voluntary dues, user fees or other sources of revenue.

SECTION 10. Supreme Court Rule 10.03(6m) is amended to read:

(6m) Petition for reinstatement from suspension for nonpayment of dues or failure to file a trust account certificate. (a) An attorney whose suspension for nonpayment of annual membership dues for state bar operations or assessments imposed by the supreme court has been for a period of less than 3 consecutive years shall be reinstated as a member ~~by the state bar board of governors~~ if he or she makes full payment of the amount owing and an additional payment of \$20 as a ~~penalty~~ reinstatement fee plus any penalties imposed by the state bar. ~~The secretary of the state bar shall certify the reinstatement to the clerk of the supreme court.~~

(b) An attorney whose suspension for nonpayment of annual membership dues for state bar operations or assessments imposed by the supreme court has been for a period of 3 or more consecutive years may file a petition for reinstatement with the supreme court. A copy of the petition shall be served on the board of bar examiners and the office of lawyer regulation. Separate payments in the amount of \$200 each shall be made to the board of bar examiners and the office of lawyer regulation and shall accompany the petition. Within 90 days after service of the petition for reinstatement, the board of bar examiners shall make a determination regarding compliance and file its finding with the supreme court. Within 90 days after service of the petition for reinstatement, the ~~director of the~~ office of lawyer regulation shall investigate the eligibility of the petitioner for reinstatement and file a response with the supreme court in support of or in opposition to the petition. Following receipt of the determination by the board of bar examiners and the response of the

office of lawyer regulation, the supreme court shall consider and approve grant or disapprove deny the petition for reinstatement.

(c) An attorney suspended from the practice of law for failure to comply with the trust account certification requirement under SCR 20:1.15 (g) shall be reinstated as a member by the state bar ~~board of governors~~ if he or she files the prescribed certificate. The ~~secretary of the~~ state bar shall certify the reinstatement to the clerk of the supreme court.

SECTION 11. Supreme Court Rule 10.03(7) (a) is amended to read:

(7) (a) Voluntary resignation of membership. If a member of the state bar files with the ~~executive director~~ state bar a written notice of the member's surrender of his or her license to practice law and the acceptance by the supreme court of his or her resignation in the state bar, the person shall then cease to be a member of the state bar and his or her name shall be removed from the membership register. Before accepting a resignation, the supreme court shall request from the office of lawyer regulation information concerning whether the attorney is the subject of any pending grievances, investigations, or proceedings.

SECTION 12. Supreme Court Rule 10.03(7) (b)2. is amended to read:

(7) (b)2. The attorney shall file an original petition for readmission to the state bar with the clerk of the supreme court and shall file copies of the petition with the board of bar examiners and the office of lawyer regulation. The member shall pay \$200 each to the board of bar examiners and the office of lawyer regulation which payment shall accompany the copy of the petition. Within 90 days after receipt of the copy of the petition for readmission, the board of bar examiners shall make a determination regarding the eligibility of the petitioner

for readmission and file its finding with the clerk of the supreme court. Within 90 days after receipt of the copy of the petition for readmission, the ~~director of the~~ office of lawyer regulation shall investigate the eligibility of the petitioner for readmission and file a response with the clerk of the supreme court in support of or in opposition to the petition. Following receipt of the determination by the board of bar examiners and the response of the office of lawyer regulation, the supreme court shall consider and ~~approve~~ grant or ~~disapprove~~ deny the petition for readmission.

SECTION 13. Supreme Court Rule 10.03(8) is amended to read:

(8) Avoidance of hardship. The ~~board of governors~~ state bar may, in any case in which to do otherwise would result in hardship or injustice, permit the retroactive enrollment of members and waive penalties prescribed for delinquency in the payment of membership dues.

SECTION 14. Supreme Court Rule 31.02 is amended to read:

(1) A lawyer shall attend a minimum of 30 hours of approved CLE during each reporting period. A lawyer who is a senior active member shall attend a minimum of 15 hours of approved CLE during each reporting period.

(2) A lawyer shall attend a minimum of 3 of the ~~30~~ hours required under sub. (1) on the subject of legal ethics and professional responsibility in every reporting period.

(3) A lawyer may attend a maximum of six (6) hours of the ~~30~~ hours required under sub. (1) on subjects designed to enhance a lawyer's awareness and understanding of substance abuse/dependence disorders, mental illness, stress management, and work/life balance relating to the practice of law.

(4) A lawyer may attend a maximum of six (6) hours of the ~~30~~ hours required under sub. (1) on the subject of law practice management, which may include topics such as client communications, trust accounting, record keeping, applications of technology, and other subjects essential to the practice of law. Courses or portions of courses dealing primarily with profit enhancement or marketing of services will be denied credit.

(5) A lawyer may not claim credit for attending the same course more than one time during a reporting cycle.

IT IS FURTHER ORDERED that notice of the above amendments be given by a single publication of a copy of this order in the official publications designated in SCR 80.01, including the official publishers' online databases, and on the Wisconsin court system's website. The State Bar of Wisconsin shall provide notice of this order.

Dated at Madison, Wisconsin, this 2nd day of March, 2021.

BY THE COURT:

Sheila T. Reiff
Clerk of Supreme Court

