

STATE OF WISCONSIN
IN SUPREME COURT
RULEMAKING DOCKET 11-01

AMENDED PETITION FOR A VOLUNTARY STATE BAR OF WISCONSIN: TO AMEND
SCR 10.01(1), SCR 10.02(1), SCR 10.03(1), and (2), SCR 10.03(4)(a) and (b), SCR
10.03(5)(intro), 10.03(6), 10.03(6m)(a) AND 10.03(6m)(b)

AND TO REPEAL SCR 10.03(3)(b) and (c), 10.03(5)(b), AND STATE BAR BYLAW
ARTICLE I, SECTION 5.

AND TO MAKE WHATEVER OTHER RULE CHANGES ARE NECESSARY TO
TRANSITION FROM A MANDATORY TO A VOLUNTARY STATE BAR OF WISCONSIN

Attorneys Steven Levine (former President, State Bar of Wisconsin; member, State Bar Board of Governors) and James Thiel (member, State Bar Board of Governors) hereby petition the Supreme Court to amend SCR 10.01(1), 10.02(1), 10.03(1) and (2), 10.03(4)(a) and (b), 10.03(5)(intro), 10.03(6), 10.03(6m)(a) and 10.03(6m)(b) as follow, and to repeal SCR 10.03(3)(b) and (c), 10.03(4)(a), 10.03(5)(b), and State Bar bylaw Article I, Section 5, -- and to make whatever other rule changes are necessary to create a voluntary State Bar of Wisconsin:

SCR 10.01(1) There shall be an association to be known as “the state bar of Wisconsin” composed of persons licensed to practice law in this state, ~~and~~ but membership in the association shall not be a condition precedent to the practice of law in Wisconsin.

SCR 10.02(1) Creation of Association. All persons licensed to practice law in this state who choose to join are organized as an association to be known as the “state bar of Wisconsin,” subject to the provisions of this chapter. The rules of this chapter, which are adopted in the exercise of the court’s inherent authority over members of the legal profession as officers of the court, may be referred to as “state bar rules.” The state bar may, for the purpose of carrying out the purposes for which it is organized, sue and be sued, enter into contracts, acquire, hold, encumber, and dispose of real and personal property.

SCR 10.03(1) Persons included in membership. As of the effective date of this rule, membership in the state bar consists of all those persons who on that date are licensed to practice law in this state and who choose to join. After the effective date of this rule, the membership includes all persons who become licensed to practice law in this state and who choose to join; subject in each case to the conditions and requirements of membership. Residence in this state is not a condition of eligibility to membership in the state bar.

SCR 10.03(2) ~~Enrollment.~~ Registration. Every person who becomes licensed to practice law in this state shall ~~enroll in~~ register with the state bar by ~~registering~~ providing his or her name and social security number with the association within 10 days after admission to practice. Any change after registration ~~enrollment~~ in any attorney's ~~member's~~ office address or social security number shall be reported promptly to the state bar. The social security number of a person enrolling in the state bar may not be disclosed to any person or entity except the supreme court and its agencies, or as otherwise provided by supreme court rules.

SCR 10.03(4)(a) No individual other than ~~an enrolled active member of the state bar~~ an attorney licensed by the supreme court may practice law in this state or in any manner purported to be authorized or qualified to practice law.

SCR 10.03(4)(b) A court or judge in this state may allow a nonresident counsel to appear and participate in a particular action or proceeding in association with ~~an active member of the state bar of Wisconsin~~ an attorney licensed to practice in this state who appears and participates in the action or proceeding. An order granting nonresident counsel permission to appear and participate in an action or proceeding shall continue through subsequent appellate or circuit court actions or proceedings in the same matter, provided that nonresident counsel files a notice of the order granting permission with the court handling the subsequent appellate or circuit court action or proceeding.

SCR 10.03(5)(intro) Membership dues ~~and reduction of dues for certain activities.~~

SCR 10.03(6) Penalty for nonpayment of ~~dues~~ assessments. If the annual ~~dues or~~ assessments of any member remain unpaid 120 days after the payment is due, the ~~membership of member's~~ license to practice law is suspended in the manner provided in the bylaws ; and no person whose ~~membership~~ license is so suspended for nonpayment of ~~dues or~~ assessments may practice law during the period of suspension.

SCR 10.03(6m)(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 three consecutive years shall be reinstated ~~as a member~~ by the ~~state bar board of governors~~ supreme court if he or she makes full payment of the amount owing and an additional payment of \$20 as a penalty. The secretary of the state bar shall certify the reinstatement to the clerk of the supreme court.

SCR 10.03(6m)(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 three 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 shall make a determination regarding compliance and file its findings 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.

These repeals and amendments generally accomplish three things: 1. They remove the requirement that attorneys admitted to practice in Wisconsin pay mandatory dues to the State Bar; 2. They remove the *Keller* dues rebate rule and bylaw, which become unnecessary for a voluntary bar; and 3. In all other respects, they retain the current structure of the State Bar of Wisconsin.

This petition is presented to the Court for the following reasons:

1. In *Keller v. State Bar of California*, 496 U.S. 1, 13-14 (1990) the court set forth two activities which justify an integrated state bar and the collection of mandatory dues to support those activities: regulating the legal profession and improving the quality of legal services offered by members of the bar.

2. The State Bar of Wisconsin is not a regulatory agency.

3. While the State Bar of Wisconsin does offer continuing legal education programs and publications designed to elevate the ethical and educational standards of bar members, these programs and publications are supported by user fees and not by State Bar dues.

4. A majority of State Bar of Wisconsin members favor a voluntary bar.

5. Since 2005, four of the seven lawyers elected president-elect of the State Bar of Wisconsin – Steven Levine, Douglas Kammer, James Boll and Kevin Klein -- have explicitly advocated a voluntary State Bar as part of their campaign platforms.

6. A voluntary Bar would be a more independent bar, free to take positions in the best interests of the public and its own members.

7. On June 25, 2010, the State Bar Board of Governors voted 25-17 to petition this Court to consider the issue of whether State Bar membership should be voluntary or mandatory. That vote was one vote short of the super-majority of 60% required by the Bar to petition this Court.

These proposed changes in Supreme Court rules governing the State Bar (SCR Ch. 10) would preserve the structure of the Bar exactly as is, with the exception that State Bar membership would become voluntary. This proposed structure has four important advantages:

1. It preserves the current close, cooperative, and supervisory relationship between the State Bar as an organization and the Supreme Court as regulator of the practice of law;
2. It frees the State Bar from *Keller* restrictions and enables the Bar to act as it best sees fit in the interests of the public and its members;
3. It preserves the Bar's present administrative function of registering and billing all lawyers licensed to practice law in Wisconsin, such as collecting supreme court assessments;
4. It respects the freedoms of speech and association of those Wisconsin attorneys who choose not to join.

A memorandum in support of this petition is attached.

Respectfully submitted,

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