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FILED

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**CLERK OF SUPREME COURT
OF WISCONSIN**

November 30, 2023

Clerk of the Wisconsin Supreme Court
Attention: Deputy Clerk-Rules
P.O. Box 1688
Madison, WI 53701-1688

Re: Rules Petition 23-04 - Modification to SCR Chap 10 - Membership of the
Board of Governors

Your Honors:

I write to express my opposition to granting this petition. The petition would change the composition of the Board of Governors (BOG) by granting a BOG vote to a member of the Section Leaders Council. According to the petition, the vote in favor of the proposal was unanimous. That is misleading. I submit the BOG did not know it was voting to change its composition and grant a vote to a Section Leader. This is because this provision was buried in a 345-page agenda, in long portion of supposed technical changes and placed on the BOG's "consent agenda." The standard procedure at the BOG for any matter of significance is to first place it on the agenda as a "Discussion" item at one meeting and then it becomes an "Action" item up for a vote at the next BOG meeting. The "Consent" agenda is for innocuous matters or those that no reasonable BOG member would oppose. Under the Bar's by-laws, any one member of the BOG can ask an item be removed from the consent agenda.

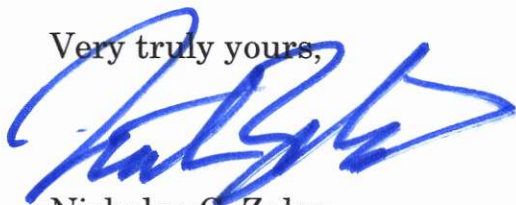
The essence of due process and fair play is notice and the right to be heard. In this case, no notice was provided to the BOG. I have attached a portion of the June 9, 2021, BOG agenda. There is nothing in the description of the items on the consent agenda that a change in BOG composition was included (Item C2). The summary of changes does not mention it. There had been no discussion of this the entire bar year. It was not mentioned at the meeting. In the "Actions Taken Memo" following that meeting, there is no mention of the BOG voting to change its composition. (Attached).

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The bar's Executive Committee sets the BOG's agenda. In the past, it provided real notice of significant items. In this case, it did not. Had I known this provision was there I would have requested it be removed from the consent agenda and moved to a discussion item. Around 2010 a bar committee spent a year looking into proposed changes to Supreme Court Rules and our bylaws. At the BOG, I opposed two of them. One to eliminate the officer position of "Secretary," on the grounds it had no real purpose. I prevailed on that by 3 or 4 votes. I also opposed granting a member of the Section Leaders Council a BOG vote. I believe that any BOG member with a vote should be elected for that purpose. A section leader is twice removed from any vote other than by section members for its chair. I lost that one by 3 or 4 votes. The proposals were not submitted to this court.

If the composition of the BOG is to change and a member of the Section Leaders Council is granted a vote, it should be done the normal way. On the BOG agenda first as a discussion item and then an action item. It should not be done with no notice and no vote on that item specifically. A change in the BOG's composition does not belong on the consent agenda. While there is a great deal of detail on trivial items on the consent agenda, such as changing the language to be gender-neutral, there is nothing to alert any BOG member a change in the BOG's composition was included. The fact a petition to this court is required to change this rule is proof this item did not belong on the consent agenda. I urge the court to reject this petition and send it back to the BOG. There it can become a discussion item and then up for a vote. There is no urgency as the petition was not filed until two years after the June 9, 2021 BOG meeting. At both the June and September 2023 BOG meetings, there was no notice of any petition to be filed with this court. I only noticed it by accident. If this court is going to change the composition of the BOG, it should be based on a specific discussion and vote of the BOG.

Very truly yours,



Nicholas C. Zales
State Bar No. 1019289



STATE BAR OF WISCONSIN
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DRAFT AGENDA

Board of Governors
June 9, 2021
Virtual Meeting

Below is the information needed to be connected to the call:

<https://zoom.us/j/96958936383?pwd=ZThrWThEYkNJTGJqUElwaFRlVVYxZz09>

Meeting ID: 969 5893 6383

Passcode: 208631

Dial by your location

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

+1 929 205 6099 US (New York)

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

+1 669 900 6833 US (San Jose)

A. ORGANIZATIONAL

1. Roll Call

2. Remarks from Judge Randy Koschnick

Judge Randy Koschnick, Director of State Courts, will address the Board of Governors.

3. Approval of June 9, 2021 Draft Agenda

4. Approval of April 16, 2021 Minutes (Attachment A)

B. ELECTIONS

1. Election of State Bar of Wisconsin Delegates to the ABA House of Delegates (Attachment B)

The Board will elect two members to the ABA House of Delegates as representatives of the State Bar of Wisconsin. One of the delegates must be eligible to serve as a young lawyer representative. Washington, D.C. attorney Jim Casey and Milwaukee attorney Michael Hopkins are the two candidates for the State Bar ABA Delegate position. Madison attorney Allison Borsheim and Denver, CO attorney Jose Castro are the two candidates for the State Bar ABA Young Lawyer Delegate position. At its May 21 meeting, the Executive Committee unanimously voted to invite the candidates to the June Board meeting to provide a very brief, no more than two minute, verbal statement to the Board. A written statement from each candidate is also included with the meeting materials. Voting will take place by electronic ballot immediately following the verbal statements.

2. **Election of Members of the FY 22 Executive Committee (Attachment C)**
As required by SCR 10.06, the Board will elect six members of the FY 2022 Executive Committee from members of the Board who will be serving during the 2022 fiscal year. Continuing governors and governors-elect are eligible to serve. Other members of the Executive Committee by rule are the president, president-elect, immediate past president, chairperson of the board, and one representative from each of the four divisions. Candidates for the FY 22 Executive Committee were asked to self-nominate and provide a written statement of 250 words or less as to why they want to serve on the Executive Committee. At its May 21 meeting, the Executive Committee voted unanimously that voting would take place by electronic ballot during the meeting and would be based solely on the written statements submitted by the candidates.

C. CONSENT AGENDA

Article III, Section 9 – State Bar Bylaws – “At any regular or special meeting, any business placed on a consent agenda that is part of the notice or call will be acted upon without debate. Business listed on the consent agenda may be removed by any one governor within a 72-hour notice to the Secretary of the State Bar of Wisconsin.”

1. **Request from the Appellate Practice Section to Amend Bylaws (Attachment D)**
The Appellate Practice Section requests Board of Governors approval of amendments to its bylaws.
2. **Proposed Changes to the Supreme Court Rules and State Bar Bylaws (Attachment E)**
At the request of the Racial Justice Task Force, the BOG Governance Committee has conducted a review and passed a package of proposed changes. The proposed package includes two main items: gender-specific bylaws or SCR language identified as a potential barrier to members was changed to more broad, comprehensive gender-neutral terms; and adding an emergency clause creating a process in the event of a state or national emergency. At its May 21 meeting, the Executive Committee unanimously voted to make an additional change to the proposed changes to the Supreme Court Rules and the State Bar Bylaws to increase the number of members eligible to serve on the State Bar’s Audit Committee from five to seven. This language can be found on page 41, lines 20 and 24 of the redline document. The Executive Committee then voted unanimously to place all of the amended Rules and Bylaws on the Consent Agenda. Upon approval, the seven members of the Audit Committee for FY 22 will be: Atty. Marcia Lucas, Chair, Atty. Grant Birtch, Atty. Noah Fenceroy, Atty. Dave Gorwitz, Atty. Tom Phillips, Atty. David Werwie and Ms. Melody Rute.
3. **Administration Recommendations for Bylaws Revisions (Attachment F)**
The staff administration is recommending two modifications to the State Bar of Wisconsin Bylaws. One provision would change from the president to the president-elect the appointment of the nominating committee for the chair of the Board of Governors. The second would allow for an electronic registration process for new members of the State Bar. At its May 21 meeting, the Executive Committee voted unanimously to place these recommendations on the Consent Agenda

1 **SCR 10.05 Board of governors.** (1) Composition of board. The affairs of the association
2 shall be managed and directed by a board of governors consisting of ~~the~~ 6 officers of the
3 association, all of whom shall be ex officio members-at-large of the board, not fewer than 34
4 members elected from the state bar districts established under sub. (2), one member selected by
5 the young lawyers division pursuant to its bylaws, one member selected by the government
6 lawyers division pursuant to its bylaws, ~~five~~ 5 governors selected by the nonresident lawyers
7 division pursuant to its bylaws, one governor selected by the senior lawyers division pursuant to
8 its bylaws, one member selected by the section leaders council pursuant to its bylaws, and three ~~three~~ 3
9 nonlawyers appointed by the supreme court for staggered two-year terms. No person appointed
10 by the supreme court shall serve more than ~~two~~ 2 consecutive full terms. The rights and powers
11 of the ex officio members of the board are the same as those of elected members. All past-
12 presidents of the Wisconsin bar association or of the state bar of Wisconsin, the Wisconsin state
13 delegate to the American Bar Association house of delegates and the deans of the Marquette
14 university and university of Wisconsin law schools are entitled to floor privileges, but without
15 voting privileges.

16 (2) State bar districts. (a) For the purpose of conducting elections of the members of the
17 board of governors, the board of governors shall divide the state into 16 state bar districts
18 comprising specified counties and shall establish the number of members of the board of
19 governors to be elected from each district.

20 (b) The number of members of the board of governors elected from each state bar district
21 shall be in proportion to the number of active members entitled to vote residing in the district and
22 shall take into consideration all of the following:

23 1. The composition of the judicial administrative districts established by sec. 757.60,
24 Stats.

25 2. The geographical area of each state bar district.

26 3. All existing multi-county bar associations.

27 4. The representation of members in each state bar district afforded by members of the
28 board of governors selected by divisions of the association under sub. (1).

29 (c) Every 10 years, commencing January 1, 1995, the board of governors shall submit to
30 the court a proposed redistricting map dividing the state bar into districts in accordance with the
31 requirements in par. (b).

ACTIONS TAKEN

Board of Governors Virtual Meeting June 9, 2021

Following are the actions taken by the State Bar of Wisconsin Board of Governors at its meeting on June 9, 2021. Abstentions to roll call votes, while noted in the official record, have not been noted here. Items and reports received but not acted upon are not delineated.

- 1) Approved without objection the June 9, 2021 Board agenda as amended.
- 2) Approved without objection the April 16, 2021 Board minutes.
- 3) Elected by electronic ballot Atty. James Casey and Atty. Jose Castro as State Bar of Wisconsin representatives to the ABA House of Delegates.
- 4) Elected by electronic ballot the following FY22 members of the Board of Governors to the FY22 Executive Committee: Robert Barrington, Kathryn Bullon, Jeff Goldman, Johanna Kirk, John Macy and Amber Raffet August.
- 5) Approved without objection the Consent Agenda.
 - Request from the Appellate Practice Section to Amend Bylaws
 - President Brost's appointments to the Wisconsin Trust Account Foundation Board
- 6) Unanimously approved by a voice vote of more than two thirds of the entire Board of Governors a motion to approve proposed changes to the Supreme Court Rules and State Bar Bylaws that would include changing gender-specific bylaws or SCR language to more broad, comprehensive gender-neutral terms and adding an emergency clause creating a process in the event of a state or national emergency.
- 7) Unanimously approved by a voice vote of more than two thirds of the entire Board of Governors a motion to amend the State Bar Bylaws to modify the appointing authority for selection of the chair of the Board of Governors and to provide for an online registration process for new members.
- 8) Unanimously approved by voice vote the appointment of Governor Theresa McDowell as the FY22 Chairperson of the Board of Governors.
- 9) Unanimously approved by voice vote amendments recommended by the BOG Strategic Planning Committee to the current State Bar Strategic Plan that would focus on the addition of language related to "equity" and "accessibility."

- 10) Unanimously approved by voice vote a motion to direct the State Bar's Continuing Legal Education (CLE) Committee to prepare a petition to the Supreme Court, for final approval by the Board of Governors, which would allow diversity, equity and inclusion CLE be approved for credit and that such definition for credit will include age. Further, the State Bar president-elect shall be directed to form a task force that will study and collect data and information in support and draft language for diversity, equity and inclusion credits to be mandatory for all members of the State Bar of Wisconsin and make a quarterly report to the Board of Governors on its work.

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