KRAVIT HOVEL & KRAWCZYK

STEPHEN E. KRAVIT
kravit@kravitlaw.com

KRAVIT • HOVEL & KRAWCZYK S.C.
ATTORNEYS

TELEPHONE 414 • 271 • 7100
825 NORTH JEFFERSON
MILWAUKEE WISCONSIN
53202 • 3737
FACSIMILE 414 • 271 • 8135
www.kravitlaw.com

November 6, 2019

VIA U.S. MAIL

Wisconsin Supreme Court
16 E. State Capitol
P.O. Box 1688
Madison, WI 53701

Re: Petition 19-10

Dear Mesdames and Messrs. Justices:

I became aware of the proposal to allow for permanent licensure revocation in this Petition at a CLE seminar November 2 in a presentation by Joseph Ranney, who supports the change that would allow for licensure 'death penalty' – no possible way to ever petition for reinstatement if so ordered by the Supreme Court at the time of the license revocation decision.

I am writing, hopefully not too late, to express vehement opposition to this rule change. The prospective elimination of mercy, the advance directive to never consider changed circumstances, related to almost any limitation on human activity should not be encoded in our jurisprudence.

We don't have to look far to see the unfairness such advance directives can work in practice. Consider the 'three strikes' rule in some criminal penalty statutes – three felony convictions, and on the third the sentence must be life without parole. Over the years, myriad examples of poor prosecutorial discretion and court acceptance led to persons languishing in prison for offenses that appear minor, but were followed by one that technically created three strikes.

Or consider the innocence projects, such as the terrific one at UW Law School, that regularly turn up wrongfully convicted persons, who are very often the recipients of mandatory minimum sentences, or who were prosecuted under laws that take away discretion from courts to consider individual circumstances.

Now let's consider the value of mercy and/or changed circumstances in professional licensing. The fact is, our courts have elected judges. Each elected judge comes with his or her practice experience and political affiliation. The practice of law, societal norms, rules and laws change over time (and we are now talking about potentially a significant time, the rest of the permanently barred lawyer's life). I can think of a number of examples of conduct that would in prior decades likely get a professional law license permanently revoked, in the passion of the times:

- In the 1950's, a male lawyer has an affair with a male client. This would be illegal and outrageous for that time period and might result in permanent disbarment. Today, such conduct might result in suspension. Homosexuality, gay marriage, and inclusion of gay persons in legal protections that have evolved over the decades would make permanent revocation on such a basis unfair.

- In the 1970's, a lawyer is convicted of working with a client to import large quantities of marijuana, and is sentenced to a mandatory minimum of 10 years in prison. The supreme court at that time might well permanently revoke that law license, given the hysteria about drugs back then. Today, marijuana is not only tolerated, but in many states is legal, in some states for recreational use. Would a permanent revocation be fair, now, for such conduct?

In constitutional litigation, there is the legal concept of 'less restrictive alternative.' Can the desired law change, which might violate the constitution, be accomplished another less restrictive way? The justification for permanent revocation is that the public may believe that when a lawyer's license is revoked, they know in five years they can get their license back by petition. Leaving aside the fact that this is mostly not true, it is really a public perception problem, better addressed by accurate information and public action by the bar association. Isn't the less restrictive alternative to lengthen the disqualification for petition for readmission to, say, 10 years?

Just as in death penalty cases (Wisconsin outlawed that when it became a state!) there will always, always be doubt in *some* cases that death should have been the penalty. Licensure is no different. At the time of revocation, a suitable record of the depth of the impropriety can and should be made, that even a decade later would set the stage for likely denial of a petition to reinstate. But to completely eliminate the right of that person, regardless of circumstances which we can't possibly know today, to even petition for reconsideration or reinstatement, is antithetical to Wisconsin law and tradition. *Cf.,* Wisconsin Constitution Article I, Section 9 ("Every person is entitled to a certain remedy in the laws for all injuries, or wrongs which he may receive in his person, property, or character...he ought to obtain justice freely... completely, and *without denial*...conformably to the laws." (emphasis added)

I have been a practicing lawyer in Wisconsin for 44 years. I am a graduate of Harvard Law School, a former Assistant U.S. Attorney in the Eastern District of Wisconsin, and the founder of this firm 35 years ago, a boutique trial law firm. I have both sued and represented lawyers involved in alleged misconduct, including in matters before the OLR. I am hoping you will consider my perspective and thoughts, and hopefully decline to put in place an option for a permanent revocation.

Thank you for your consideration.

Very truly yours,

Stephen E. Kravit

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cc: Honorable Gerald P. Ptacek
Ms. Jacquelynn B. Rothstein
Mr. Joseph M. Russell
Mr. Keith Sellen