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BOARD OF BAR EXAMINERS
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August 5, 2021

Chief Justice Annette Kingsland Ziegler
Justice Ann Walsh Bradley
Justice Patience D. Roggensack
Justice Rebecca G. Bradley
Justice Rebecca F. Dallet
Justice Brian Hagedorn
Justice Jill J. Karofsky
16 East, State Capitol
P.O. Box 1688
Madison, WI 53701-1688

Dear Chief Justice and Justices:

The Board of Bar Examiners writes in response to Rule Petition 21-02 (In the Matter of Modification of Process by which Members Qualify for Transfer from Inactive to Active Status). At its meeting on July 30, 2021, the Board reviewed Rule Petition 21-02. After considerable discussion, the Board voted to oppose any modifications to SCR 31.06 and instead recommends to the Court that amendments be made to the existing CLE provision, specifically to CLE 3.015.

Rather than amending SCR 31.06, the BBE is easily able to modify CLE 3.015 (1) and (2) to include a reinstatement provision that would provide clarity and uniformity for those members who are on Senior Active status.

There is no compelling reason to remove CLE 3.015 from the Appendix. The suggested amendments could easily be incorporated into the current rule. With regard to CLE 3.015 (1) and (2), the Board recommends striking the proposed State Bar language "and seeking to return to" senior active status. By eliminating that language, attorneys who are eligible for senior status, regardless of whether they were previously in that status, would be able to take advantage of that provision. Whereas, if that language remains, attorneys who were not previously on senior active status would have to complete the full complement of CLE credits *i.e.*, thirty or sixty rather than fifteen or thirty.

Board: Marc A. Hammer, Chairperson, Green Bay; Blake J. Duren, Vice Chairperson, Reedsburg; Daniel D. Blinka, Milwaukee; Samuel Christensen, Racine; Patrick Delmore, Madison; Timothy D. Edwards, Madison; Jesus G. Q. Garza, Madison; Linda S. Isnard, Cedarburg; Kevin Kelly, Madison; Kyle J. Sargent, Appleton; Travis Stein, Cottage Grove

The final proposed change (*i.e.*, SCR 31.06 (3)) includes a provision that would apply a new standard for inactive members who hold an active law license in another jurisdiction but want to transfer to active status. It appears that the “proof of practice” standard would be applied to those seeking to return to active status, which presumably means that those who were substantially engaged in the practice of law for three of the past five years in another jurisdiction and were compliant with their CLE requirements could automatically switch to active status.

Unfortunately, the proposal fails to indicate how such determinations about the required practice experience would be made. Applicants who seek *admission* under the “proof of practice” provision (SCR 40.05) must provide evidence that they have been substantially engaged in the practice of law for three of the past five years prior to submitting an application. An investigation is conducted for each proof of practice applicant to determine whether that standard has been met. It is unclear whether the State Bar is seeking that same level of scrutiny here but, absent any such specifications, it is uncertain how that standard would be met. Additionally, those who have only been practicing for three of five years may not necessarily have acquired the full complement of credits that an otherwise inactive member seeking to return to active status would have to obtain, inevitably resulting in disparate treatment between attorneys seeking reactivation.

The State Bar maintains that these amendments would clarify that the comity provisions embodied in SCR 31.04 (3) would apply to attorneys who are in compliance with those requirements and want to return to active status. However, the proposed language does not actually achieve that goal and would instead lead to disparate treatment among those on inactive status. For instance, attorneys in California are able to take and complete “self study” courses in order to meet their continuing legal education obligations. However, Wisconsin’s rules explicitly prohibit the use of self-study courses to satisfy the CLE requirements. Under the State Bar’s proposal, if an attorney was licensed in California and wanted to reactivate her Wisconsin law license, the California self-study credits would count towards the number required for reactivation. Whereas, an otherwise currently inactive Wisconsin attorney (who is *not* actively licensed in another jurisdiction) would not be able to use self-study credits towards reactivation, causing disparate treatment among those on inactive status.

Similarly, under the State Bar’s proposal, if an attorney was substantially engaged in the practice of law in another jurisdiction with mandatory CLE for all but the last two years of the past five, that attorney would be eligible to reactivate without having to complete any additional CLE. Whereas, an otherwise inactive Wisconsin attorney (who is *not* actively licensed in another jurisdiction) would have to take and complete thirty CLE credits to become reactivated, which would again lead to disparate treatment for those on inactive status.

Under the existing CLE 3.015, lawyers may absolutely use their credits from another mandatory CLE jurisdiction provided those credits are not explicitly prohibited in Wisconsin and the attorney is current in meeting those requirements in the other jurisdiction. That standard is critical because it ensures that all Wisconsin licensed attorneys on inactive status must meet the same requirements to return to active status thereby providing consistency and uniformity.

Letter to the Court re Rule Petition 21-02

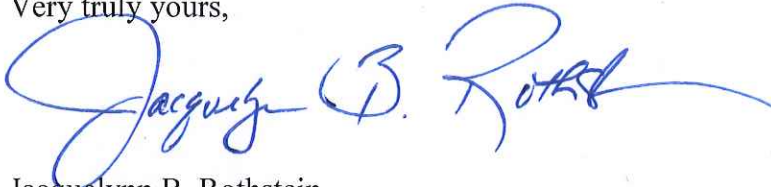
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To be sure, there are a myriad of reasons for attorneys to switch from inactive to active status and vice versa. Regardless of the reasons underlying those decisions, it is imperative to apply consistent standards to ensure fairness and equity across the board to those seeking to reactivate.

Accordingly, the BBE believes that amendments to CLE 3.015 can easily be made to address the reactivation requirements for those on Senior Active status but otherwise opposes any additional changes to it. A copy of the proposed changes to CLE 3.015 is enclosed for the Court's review.

Very truly yours,



Jacquelyn B. Rothstein
Executive Director & General Counsel

cc: Julie Rich
Kathleen A. Brost
Cheryl Daniels
Jill Kastner
Larry Martin

CLE 3.015

(1) Lawyers who have been in inactive status or have been voluntarily resigned from the State Bar and who have not complied with the last reporting period, must complete 30 hours of CLE (including 3 ethics hours) prior to resuming active status, except lawyers qualified for Senior Active status who have not complied with the last reporting period must complete 15 hours of CLE (including 3 ethics hours). Only approved CLE activities that were completed during or after the last reporting period may be used to satisfy the 30 or 15 hour requirement.

(2) Lawyers who have been in inactive status or have been voluntarily resigned from the State Bar and who have not complied with the last two reporting periods, must complete 60 hours of CLE (including 3 ethics hours) prior to resuming active status, except lawyers qualified for Senior Active status who have not complied with the last reporting period must complete 30 hours of CLE (including 3 ethics hours). Only approved CLE activities that were completed during or after the last two reporting periods may be used to satisfy the 60 or 15 hour requirement.

(3) Except as found in SCR 31.05 (5) (d) and CLE 7.005, lawyers may satisfy the requirements of the above subsections if they demonstrate to the board that, during the entire time they were in inactive status, (i) they were admitted to the practice of law in another jurisdiction that had mandatory continuing legal education requirements, and (ii) they were current in meeting those requirements.

(4) Lawyers who resume active status must also satisfy the requirements of SCR 31.02 for the reporting period in which they are reactivated.

(5) CLE requirements under this section shall not be greater than they would have been if the lawyer had not been in inactive status or had not been voluntarily resigned from the State Bar.