



STATE BAR OF WISCONSIN
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August 23, 2021

Chief Justice Annette Ziegler
Justice Ann Walsh Bradley
Justice Patience D. Roggensack
Justice Rebecca G. Bradley
Justice Rebecca F. Dallet
Justice Brian Hagedorn
Justice Jill J. Karofsky

RE: Petition 21-02

Dear Chief Justice and Justices:

We write today in response to the Board of Bar Examiners' letter of August 5, 2021, regarding Petition 21-02 filed by the State Bar of Wisconsin. We appreciate the BBE's thorough and detailed review of the proposal and agree some modifications are needed. We do, however, continue to believe that the criteria for qualification to change from inactive to active membership status should lie with the Court and within the Supreme Court rules, not the appendix as suggested. We also maintain that the application of the principles of comity to CLE requirements needed for transfer to active status is appropriate and consistent with the Court's earlier order on Petition 07-08 (comity).

Senior Active

As to the proposed language related to senior active attorneys in SCR 31.06, we would agree that the words "seeking to return" in proposed revised 31.06 (1) and (2) should be removed for clarity. We share the BBE's concern that this language could present an unnecessary limitation for older inactive attorneys who wish to return to active practice.

SCR vs. Appendix

The State Bar appreciates that the BBE has established its own rules, contained in the Appendix to SCR Ch. 40 to provide guidance in the transfer between inactive and active status. However, we believe the provisions should be clearly stated within the SCRs for better administration and transparency. The Court, responsible for setting the educational criteria needed for the practice of law, has taken direct action on CLE requirements including the minimum required credits under SCR 31.02, establishing the education required for guardians ad litem, Ch. 35 and 36, and outlining what can be used to comply in various contexts, including ethics, practice management, pro bono service or comity. The educational requirements for transferring between active and inactive membership should also be set directly by the Court and should be contained within the Supreme Court rules, such that they cannot be amended without Court action.

Comity for Transfer

The BBE and the State Bar do not agree as to whether principles of comity should apply when determining what CLE may be used to reinstate to active status when the applicant's primary practice has been in another jurisdiction. The nature of licensure for professionals continues to change to recognize the need for portability of licenses and removal of barriers for transitions between the states. Those changes must still ensure competency in the field in question and, indeed, most states have established substantially similar educational requirements for lawyers to maintain their license. To be sure, there are differences in and among requirements for mandatory CLE states. As the BBE correctly noted, California permits "self-study" courses. However, even under California's category of self-study, one method of gaining credits is also an approved means of study in Wisconsin (writing published legal materials). Ultimately, the State Bar contends that the differences in acceptable CLE are not sufficiently material that they outweigh the potential expenses and delays it would impose upon attorneys seeking active status in Wisconsin who have already maintained their educational competency in another state. Again, there are many reasons an attorney might maintain inactive status in Wisconsin, practice law elsewhere, then seek to reactivate their Wisconsin license. This includes newer Wisconsin graduates who practiced elsewhere in their young careers but decide to return home. Or a military spouse returning home who has been inactive while the family was deployed. Or a retiring experienced, yet inactive, attorney willing to practice while in the Northwoods, where the state continues to struggle to find and keep attorneys to serve these communities.

Comity serves the active member and Wisconsin well today. We believe the implementation of comity for reinstatement to active status removes barriers to practice, and enhances the state's ability to recruit a diverse pool of attorneys, and attract attorneys to underserved areas.

Again, the State Bar appreciates the BBE's careful review of Petition 21-02. After reviewing the comments, the State Bar offers an amended petition that would still allow for the use of compliance with mandatory CLE in another jurisdiction (as proposed), but which suggests a less complex standard for administration and compliance. The proposal, as revised, would simply require that the applicant for reinstatement to active status demonstrate that the applicant is licensed to practice in another jurisdiction where continuing education is required and further demonstrate that the applicant is currently compliant with those requirements. Under our proposal, an attorney would no longer need to demonstrate that they were in "active" status in another jurisdiction the "entire time" they were on inactive status in Wisconsin, as is currently required by the BBE's rules. A look-back provision that could span decades for an attorney already admitted to the Wisconsin bar is unreasonable. There are numerous benign reasons for breaks in an attorney's professional career that would trigger this proviso under the current BBE 3.015. For example, a new attorney who took time before gaining admission elsewhere, a commitment to family, or working in a position that did not require an active license. The purpose of continuing legal education is to ensure the attorney is competent in the present. We urge the court to eliminate this burdensome requirement.

Other Modification

The State Bar also proposes that language in current SCR 31.06 related to reinstatements after resignations and disciplinary suspensions be retained to ensure no process modifications are necessary for those situations.

Conclusion

Again, the State Bar appreciates the BBE's detailed review and believes that together, BBE's suggestions and our proposed modifications provide a clear, less costly, and less administratively burdensome process for transition between inactive and active status for Wisconsin licensed attorneys. As with the recently granted petition related to the student practice rule, we also hope this will be another tool toward attracting a more diverse bar membership, assist in recruiting attorneys to underserved areas, encourage non-resident attorneys to maintain their connection to Wisconsin, and enhance the portability of the Wisconsin license.

Sincerely,

Ss/

Atty. Cheryl F. Daniels, President
State Bar of Wisconsin

SECTION 1. Supreme Court Rule 31.06, is amended to read as follows:

SCR 31.06 Attendance and reporting requirements for persons upon reactivation or reinstatement. (1) The board shall determine the attendance and reporting requirements for a person who seeks to change from inactive to active membership under SCR 10.03(b) 2 in the state bar or for a person who seeks reinstatement following voluntary resignation from the state bar, license suspension that will terminate only on order of the court, or license revocation.

(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 reporting period, must complete 30 hours of CLE (including 3 ethics hours) prior to resuming active status, except lawyers qualified for and seeking to return to 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 referenced above.

(3) 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 and seeking to return to 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 30 hour requirement referenced above.

(4) An inactive member, whose practice is principally in another jurisdiction that has mandatory CLE requirements, satisfies the attendance and reporting requirements if the inactive member:

(a) Meets the same practice requirements in SCR 40.05 while inactive; and

(b) Is current in meeting the CLE requirements in 31.04(3) while practicing during the 3 out of 5 year period, except for the reporting requirement of SCR 31.03, provided the member provides a certificate of good standing or other proof of eligibility to practice law in the principle jurisdiction.

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

(6) 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.