SUPREME COURT OF WISCONSIN

No. 11-04

In the matter of the petition for a voluntary State Bar of Wisconsin.

FILED

JUN 6, 2012

Diane M. Fremgen
Clerk of Supreme Court
Madison, WI

On July 6, 2011, Attorneys Steve Levine and James Thiel filed a petition renewing their request that this court abolish an integrated State Bar of Wisconsin (State Bar).[1] The petition included language removing the current requirement that attorneys admitted to practice law in Wisconsin pay mandatory dues to the State Bar, eliminating the Keller dues rebate rule and bylaw, and retaining the current structure of the State Bar of Wisconsin "in all other respects."

The court first discussed this petition at an open administrative conference on September 15, 2011. The court debated whether to schedule a public hearing, and then voted to direct the staff commissioner to prepare a comprehensive memorandum on the question of the integration of the State Bar with the understanding the court would discuss the matter thoroughly in a subsequent open

[1] By order dated July 6, 2011, this court dismissed rule petition 11-01 filed by Attorneys Levine and Thiel, which asked this court to "take whatever steps may be necessary" to convert the State Bar of Wisconsin from a mandatory bar to a voluntary bar. (J. Ziegler and J. Gableman dissented). The dismissal was based, in part, on the petitioners' failure to provide proposed rules to implement the request. See S. Ct. Order 11-01, 2011 WI 57 (issued Jul. 6, 2011).

conference.[2] After the open conference, the petitioners and the State Bar requested that the staff commissioner memorandum on this matter be made public. The court agreed, in open conference on October 17, 2011, to decide on an ad hoc basis, whether to release the staff memorandum after reviewing it. The court discussed the matter again on November 7, 2011.

At the open administrative conference on November 7, 2011, the court voted to release the staff commissioner's memorandum,[3] discussed the petition and, ultimately, decided to deny the petition without a hearing.[4] Chief Justice Abrahamson then made a motion to appoint a committee to review the State Bar pursuant to SCR 10.10, noting that the court last conducted such a review in 1983. The Chief Justice held rule matter 11-04 in abeyance pending the court's decision on her motion. The Chief Justice advised the court that if her motion was not approved, she reserved the right to revisit the decision regarding rule petition 11-04.

The court discussed the Chief Justice's motion to appoint an SCR 10.10 committee at its open administrative conference on December 5, 2011. The court requested information from the State Bar

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[2] Justices Bradley, Crooks, Roggensack, and Ziegler voted to consider and discuss the petition upon receipt of a comprehensive memorandum. Chief Justice Abrahamson and Justices Prosser and Gableman dissented because they would have scheduled a public hearing on the matter.

[3] The staff commissioner's memorandum was made available on the court's Web site on October 25, 2011.

[4] Chief Justice Abrahamson and Justices Bradley, Crooks, and Prosser voted to deny the petition without a public hearing. Justices Roggensack, Ziegler, and Gableman dissented from that vote.

relating to the anticipated cost of such a committee and the practices for reviewing mandatory state bar organizations in other states.

The State Bar submitted a cost estimate for an SCR 10.10 performance review, estimating the review would cost $82,080. Of that amount, $70,750 would be allocated for overhead and personnel time. The State Bar also provided the court with data on the review practices in other states that have a mandatory state bar.

On January 11, 2012, the court again discussed the motion to appoint an SCR 10.10 committee, together with the information received from the State Bar. A majority of the court voted to hold the pending motion for an SCR 10.10 committee and directed staff to prepare a proposed draft order that would clarify the scope and mission of the proposed committee, as well as the appointment process.

After the January 11, 2012 conference, Attorney Steve Levine, one of the petitioners in rule petition 11-04, advised the court and the State Bar Board of Governors that he did not support a review pursuant to SCR 10.10. On February 10, 2012, the Board of Governors voted unanimously that a review was not warranted.

On February 27, 2012, the court considered a proposed draft appointment order for an SCR 10.10 committee that included a mission statement for the proposed committee and proposed several possible mechanisms for appointing a committee. After discussion, Justices Prosser, Roggensack, Ziegler, and Gableman voted against appointing a committee to review the State Bar pursuant to SCR 10.10. Chief

Justice Abrahamson and Justices Bradley and Crooks dissented, stating they supported appointment of an SCR 10.10 review committee.

Chief Justice Abrahamson then requested the court reconsider rule petition 11-04 and schedule a public hearing on rule petition 11-04. A majority of the court agreed to reconsider the matter.[5] The court then considered whether to conduct a public hearing on 11-04. Justices Prosser, Roggensack, Ziegler, and Gableman voted against conducting a public hearing. Chief Justice Abrahamson and Justices Bradley and Crooks dissented. The majority of the court then voted to deny the petition.[6]

Therefore, IT IS ORDERED that the petition is denied, without a public hearing.

Dated at Madison, Wisconsin, this 6th day of June, 2012.

BY THE COURT:

Diane M. Fremgen
Clerk of Supreme Court

¶1 SHIRLEY S. ABRAHAMSON, C.J. *(dissenting).* Because it may be difficult to follow the procedure and final votes, I write to make clear that my first choice was to create an SCR 10.10 committee to

[5] Chief Justice Abrahamson and Justices Bradley, Crooks, and Roggensack voted to reconsider rule petition 11-04. Justices Prosser, Ziegler, and Gableman opposed reconsideration.

[6] Justices Prosser, Roggensack, Ziegler, and Gableman voted to deny the petition. Chief Justice Abrahamson and Justices Bradley and Justice Crooks dissented.

evaluate the operations of the State Bar.[7] No such committee has been appointed since 1983. This proposal was defeated by Justices Prosser, Roggensack, Ziegler, and Gableman.

¶2 My second choice was to hold a public hearing on the petition to "deunify the bar." This proposal was also defeated by Justices Prosser, Roggensack, Ziegler, and Gableman.

¶3 There is significant unrest in the bar, and I had hoped either a study or a public hearing would assist the court and the members of the bar in identifying issues of concern about the operation of the bar.

¶4 For these reasons I write separately in dissent.

¶5 I am authorized to state that Justice ANN WALSH BRADLEY and Justice N. PATRICK CROOKS join this dissent.

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[7] Supreme Court Rule 10.10 provides:

> The supreme court shall appoint a committee to review the performance of the state bar in carrying out its public functions at such time as the court deems it advisable. The supreme court shall determine in its order of appointment the size and composition of the committee. The state bar shall pay the expenses of the committee.