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SUPREME COURT OF WISCONSIN

NOTICE
This order is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 11-05

In the matter of the petition to review change in State Bar bylaw.

FILED

JUL 5, 2012

Diane M. Fremgen
Clerk of Supreme Court
Madison, WI

Pending before the court is a challenge to amendments to Article I, Section 5 of the bylaws of the State Bar of Wisconsin which concerns the arbitration process used when a member of the state bar challenges a state bar compulsory dues expenditure under SCR 10.03(5)(b)1. The State Bar board of governors approved the amendments at its meeting in April 2011.[1] On April 15, 2011, the bylaw changes were duly filed with the Wisconsin Supreme Court pursuant to SCR 10.13(2) and Article IX of the State Bar bylaws.[2] SCR 10.13(2) provides that:

[1] SCR 10.13(2) provides that the provisions of the bylaws of the State Bar are subject to amendment or abrogation by resolution adopted by vote of two-thirds of the members of the board of governors, or action of the members of the association expressed through the referendum procedure defined in SCR 10.08.

[2] The amendment was also published in the May 2011 Wisconsin Lawyer.

> A petition for review of any such change in the bylaws will be entertained by the court if signed by 25 or more active members of the association and filed with the clerk of the court within 60 days after publication of notice of the change. Hearing upon such a petition will be pursuant to notice in such manner as the court directs.

On July 6, 2011, 25 active members of the State Bar of Wisconsin filed a petition with this court asking the court to review and void or amend the bylaw amendments.

The petitioners challenged the legal effect of an amendment to Article I, Section 5(b), asserting that it was inconsistent with Wis. Stat. Ch. 788 (Arbitration) by, inter alia, improperly providing for de novo judicial review of an arbitrator's decision. The petitioners asked this court to adopt proposed alternative language.

The court discussed the petition at open administrative conference on September 15, 2011, and concluded the court would benefit from additional information prior to proceeding with the petition. An order directing briefing issued on October 7, 2011, and the parties filed letter briefs. On February 27, 2012, the court discussed the petition and voted to schedule a public hearing.

The court conducted a public hearing on the petition on Wednesday, May 16, 2012. Attorney Steve Levine presented the petition. Attorney Roberta Howell appeared on behalf of the State Bar of Wisconsin. Both speakers agreed that some of the minor technical aspects of the amendments were not controversial. The discussion focused primarily on the petitioners' assertion that the State Bar has unilaterally changed the terms of arbitration by amending Article I, Section 5 of the bylaws. Attorney Levine also

reiterated the petitioners' request that the court adopt alternate amendments as set forth in the petition.

The State Bar asserted that the provision for de novo review of an arbitrator's decision is "merely an express recognition of the constitutional standard applicable to dues reduction arbitration decisions first set forth by the United States Supreme Court in Chicago Teachers Union v. Hudson, 475 U.S. 292 (1986)."

At the ensuing open administrative conference, the court discussed the matter. After some discussion about the appropriate standard of review applicable to bylaw amendments, the court concluded that even if the amendment at issue is consistent with controlling case law, the language, as drafted, is potentially confusing. The court discussed whether the amendment could be cured with a comment or notation clarifying that the language is intended to reflect controlling case law, noted that it had no objection to many of the technical aspects of the amendment, and expressly declined to adopt the petitioners' proposed language including a proposed standard of review. A majority of the court then voted to grant the petition, in part, by rejecting the State Bar bylaw amendment and to deny the petition, in part, by declining to adopt any of the alternate language suggested by the petitioners. Justice Bradley and Justice Roggensack dissented. Justice Bradley indicated she agreed the bylaw amendment was an accurate statement of the law and would deny the petition. Justice Roggensack concurred with Justice Bradley. Therefore,

IT IS ORDERED that the petition is granted in part. The amendment of Article I, Section 5 of the State Bar bylaws filed with

the Wisconsin Supreme Court on April 15, 2011, is rejected by the court; and

IT IS FURTHER ORDERED that the petition is denied in part. The court declines to adopt any of the alternate language suggested in the petition.

IT IS FURTHER ORDERED that notice of the entry of this order be given by a single publication of a copy of this order in the official state newspaper and in an official publication of the State Bar of Wisconsin.

Dated at Madison, Wisconsin, this 5th day of July, 2012.

BY THE COURT:

Diane M. Fremgen
Clerk of Supreme Court