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In the matter of:

13-09

The petition of the State Bar of Wisconsin proposing revisions to SCR 10.03(3) and SCR 10.03(5) relating to classes of membership and membership dues and reduction of dues.

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BRIEF IN OPPOSITION TO STATE BAR RULEMAKING PETITION  
By Steven Levine

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FACTS

On July 3, 2013, the State Bar of Wisconsin submitted a rulemaking petition to the Court requesting amendment of Supreme Court rules 10.03(3) and 10.03(5) to create three classes of emeritus Bar members for dues paying purposes and to reduce by one-half the dues of Bar members in their fourth and fifth years of membership.<sup>1</sup> These proposed amendments are confusing, unworkable, not well written, and should be rejected by the Court. If the Court does approve any amendments concerning dues increases for emeritus lawyers, those amendments should provide as an alternative that emeritus Bar members may pay the equivalent of these increases directly to a group providing legal services to poor or underserved clients instead of the State Bar.

I. EMERITUS BAR MEMBERS.

Under current rules attorneys who reach age 70 become emeritus Bar members and pay no State Bar dues. Under the State Bar's proposed rule changes, there would be three classes of emeritus members: 1. Emeritus members (age 75 and over) would pay no State Bar dues or Supreme Court assessments. 2. Active emeritus members (age 70-75 who bill 800 or more hours annually, or their equivalent) would pay full State Bar dues and full Supreme Court assessments; and 3. Senior emeritus members (age 70-75 who bill less than 800 hours annually, or their equivalent) would pay one-half State Bar dues and one half Supreme Court assessments. The State Bar's proposal moves "true" Emeritus status from age 70 to 75.

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<sup>1</sup> The Court should be aware that the Board of Governors has also been discussing a general dues increase – perhaps in the \$25-\$50 per member range for the 2014-15 fiscal year – apparently to be acted on after the Court considers this Bar petition. (That dues increase can be accomplished without Court approval.) The Bar's supporting memorandum does not disclose this development to the Court – stating only (at page 1) that dues for an active member for FY 14 will be \$224 -- perhaps hoping that nondisclosure will increase the chances that the Court will approve this petition.

These definitions are troublesome in at least two respects. First, the proposed State Bar amendments don't specify whether the 800 billable hours of legal work annually are based on the previous year's billable hours or the current year's billable hours – or calendar year or State Bar (July 1 to June 30) fiscal year hours. With State Bar dues being due by July 1 each year, Bar members who pay their dues by that date may be unsure of whether their total amount of billable hours will exceed 799 by the end of the calendar year. (Example: A lawyer age 70 may begin work for a new firm on August 1 and bill 800 hours in the period August 1 – December 31.) Second, there are State Bar members who do not bill on an hourly basis – contingent fee lawyers, corporate lawyers, publicly employed lawyers, law professors, and others who do not bill clients or are paid on a salary basis. The 800 hours of billed legal work – or their equivalent -- is not a good criterion that provides adequate guidance to Bar members as to their dues obligation.

Additionally, the original idea behind establishing the emeritus member classification at age 70 was to honor the contributions of senior lawyers to the profession and encourage them to remain Bar members and contribute to the Bar. By redefining the emeritus category to age 75, the State Bar removes that honor and disrespects the status of emeritus members because of the Bar's financial condition. During the past 8 years of my participation as an officer and governor, the State Bar has foolishly spent large amounts of money on such items as a new logo (costing tens of thousands of dollars), board of governors meetings at resorts throughout Wisconsin (costing annually perhaps \$40,000-45,000 over the cost of meetings in the State Bar building), and such trinkets for governors as liquor flasks engraved with the State Bar logo (costing perhaps up to \$1,000). Emeritus members should not have to pay for the excesses of the State Bar through a dues increase. (The State Bar's memorandum also does not appear to discuss CLE obligations for active or senior emeritus members – including the financial implications of any CLE requirements. Nor does the State Bar's memorandum provide any factual basis for the Court as to the number of "members of the profession who have chosen to practice longer into their careers," which is the entire basis on which the petition rests. Bar supporting memorandum, page 1.)

Finally, if the Court does decide to approve dues increases for emeritus members, the Court may wish to adopt an amendment to the State Bar's proposals as follows: "In lieu of paying dues to the State Bar, an active emeritus member or senior emeritus member may contribute the equivalent amount directly to organizations which provide free or reduced-rate legal services to underserved clients or clients who cannot afford legal services." Wisconsin attorneys who reach the age of 70 have arrived at a time in their lives where they wish to give back to the public as a measure of appreciation for their careers, and they have the wherewithal to do so. Providing legal services to all citizens of Wisconsin should be a primary focus of State Bar members. Active and senior emeritus members should be allowed to contribute money directly to legal services organizations where they know the money will be put to good use – not used for logos, luxury meetings, liquor flasks, or legislative lobbying on political issues.

## II. NEW BAR MEMBERS.

The State Bar's petition also requests a change to SCR 10.03(5) to allow fourth and fifth year Bar members to pay one-half dues. Currently new members pay one-half dues for their first three years of membership. The State Bar's proposal increases that by two years. According to the Bar's supporting memo, the purpose of this change is "to provide extended economic relief for attorneys who have recently entered the practice of law." The petition does not state the reasons why the State Bar feels that lawyers who have recently entered the profession require "extended economic relief" or any factual basis for the petition.

1. If the reason for "extended economic relief" for new members is the reduced prospects of employment for newly admitted lawyers, the Bar's proposal is a shotgun approach that does not solve the problem with particularity. The University of Wisconsin Law School reports that 65 percent of its 2012 graduates were employed in positions requiring bar admission within nine months of graduation – a figure the law school reports to the ABA. Of the 2012 graduating class of 284 students, 186 (65 percent) were employed in positions (including 12 part-time or short-term) requiring bar membership, while 70 (25 percent) were employed in positions not requiring bar membership. This leaves 28 2012 graduates (10 percent) as unemployed.

If the purpose of the Bar's proposal is to provide dues relief to law school graduates who have not yet procured employment which requires bar membership (or who are otherwise unemployed), why should the 65 percent of new lawyers who *have* procured such employment – perhaps with some of Wisconsin's largest law firms – be given relief, especially considering the State Bar's current financial situation?<sup>2</sup> The relief should be aimed at those who need it. One possible alternative might be to provide the Bar's proposed relief of one-half dues to those who check a box on the Bar's dues statement indicating that they graduated within the past five years but are not employed in the practice of law.

2. Or, perhaps the reason for the State Bar's proposed "extended economic relief" for new lawyers is to help relieve the large law school debt load of recent graduates. (UW Law School indicates that the average law school debt of 2012 graduates was \$77,077 per graduate. The average debt load for a private law school like Marquette may be much greater.) This raises the philosophical/political question for the Court of whether State Bar members and the membership dues structure should subsidize law school tuition and an individual's economic decision whether and where to attend law school. One-half State Bar dues – a total of \$112 per year -- will not make much of a dent in \$77,000+ of law school debt. Any State Bar effort at reducing law school

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<sup>2</sup> The Court should ask itself whether a decrease of \$144,000 in State Bar revenue is justified when 65 per cent of recent law school graduates are employed in positions requiring bar admission and another 25 per cent are employed in other positions. Providing relief to Bar members not employed at all would cost the State Bar an estimated \$14,400, while providing relief to all recent graduates not employed in positions requiring bar admission would cost an estimated \$50,400.

graduates' debt might better be spent by encouraging systemic change in legal education, such as more on-line law school courses.

Both the substance and the details of this State Bar petition do not indicate well-thought-out dues change proposals. Nor does the State Bar's supporting memorandum provide the Court with an adequate factual basis on which to make decisions in this proceeding. The Court may wish to direct the Bar to revise its proposed dues changes regarding both emeritus and newly admitted lawyers along the lines discussed above and, if the Bar wishes, to return to the Court with proposals which are more carefully drafted and provide a better record on which the Court can base a decision. The Court should also be provided with full disclosure concerning the State Bar's financial situation before making a decision on these dues matters.<sup>3</sup>

Respectfully submitted,

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<sup>3</sup> The Court should also be aware that the Wisconsin Access to Justice Commission may be petitioning the Court in the foreseeable future for a funding assessment on each Wisconsin lawyer in the amount of \$45-plus per year, potentially adding to a Wisconsin lawyer's financial obligations.