

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. 13-08

In the matter of the petition of the State Bar of Wisconsin proposing revisions to SCR 10.05(4) (a) (5) and SCR 10.05(4) (g) Board of Governors, Functions; SCR 10.06(2) Executive Committee, Powers; SCR 10.09(2) Disbursements; SCR 10.12 Official Publication; Notice to Members; SCR 10.13(2) Amendment, Amendment of Bylaws.

FILED**JUN 24, 2014**

Diane M. Fremgen
Clerk of Supreme Court
Madison, WI

On July 3, 2013, the State Bar of Wisconsin (State Bar) filed a petition requesting amendments to Supreme Court Rules (SCRs) 10.05(4) (a)5, 10.05(4) (g), 10.06(2), 10.09(2), 10.12, and 10.13(2). The State Bar states that the petition was filed to afford the State Bar more flexibility in how it provides notice of supreme court and State Bar activities.¹

¹ As of the date of this order, another rule petition relating to publication is also pending before this court. Rule petition 12-09, In re Matter of Publication of Supreme Court Orders - creation of rules under Supreme Court Rules Ch. 80 and amendment of Supreme Court Rule 98.07, Publication of Rules, was filed September 7, 2012, by the Publication Review Committee. That petition proposes changes and additions to SCR Chapter 80, designed to govern publication of supreme court orders and opinions issued in cases, as well as amendments to SCR 98.07, which governs publication of orders in rule matters. Petition 12-09 is being held by a justice. Petition 13-08 can be considered and decided independent of petition 12-09; adoption of this petition will not conflict with the amendments proposed in petition 12-09.

The proposed amendments would modify the manner in which the State Bar designates its official publication and provides notice to the members of the State Bar. The amendments would permit the State Bar to provide notice electronically in certain instances. The State Bar also filed with its petition a "publication plan," outlining its intended publication procedures, and amendments to related State Bar bylaws.²

The court discussed the petition in open conference on September 12, 2013, and voted unanimously to solicit public comment and to engage in further discussion at a future open conference. On October 11, 2013, the court sent letters seeking public comment and requesting additional information from the State Bar. Comments were received from Attorney Steven Levine on November 14, 2013, expressing concern, *inter alia*, that electronic communications are less likely to be "noticed, taken seriously, read, and responded to" than written communications. Attorney Nilesh Patel, who served as chair of the State Bar Communications Committee during the development of its publication plan, wrote to the court on November 29, 2013, expressing support for the petition. The State Bar filed a memorandum on November 29, 2013, responding to certain questions posed by the court. In particular, the court asked the State Bar to confirm that members of the public will have access to information about the court's activities. The State Bar advised the court that notice of supreme court orders and notice of public hearings and open

² According to the State Bar's supporting memorandum, the bylaw amendments were approved by the State Bar Board of Governors by a unanimous vote on June 12, 2013.

conferences will be publicly available on the State Bar website. The State Bar further advised the court that, as outlined in the publication plan, the notices, such as supreme court orders under SCR 98.07 and amendments to State Bar bylaws, will be published in both the print and electronic versions of the Wisconsin Lawyer magazine. They will also be published in the State Bar's current biweekly electronic newsletter, Insidetrack, which is also available to the public.

The court further discussed the petition in open conference on May 27, 2014, reviewing the comments and responses received. The court voted unanimously to decide the petition without a public hearing. The court then noted that this petition is compatible with pending petition 12-09; the two petitions can be decided separately. The court voted unanimously to approve the petition, as drafted, with an effective date of July 1, 2014.

Therefore,

IT IS ORDERED that, effective July 1, 2014, the Supreme Court Rules are amended as follows:

SECTION 1. 10.05 (4) (a) 5 of the Supreme Court Rules is amended as follows:

SCR 10.05 **(4)** (a) 5. Arrange for publication of ~~an~~ official state bar ~~bulletin or journal~~ publications.

SECTION 2. 10.05 (4) (g) of the Supreme Court Rules is amended as follows:

SCR 10.05 **(4)** (g) A ~~complete~~ summary of the minutes of each meeting of the board of governors shall be ~~promptly printed in the Wisconsin bar bulletin~~ provided to the membership in an official

state bar publication, with a notation that any interested ~~person member~~ may obtain a copy of the minutes ~~on request to the secretary~~.

SECTION 3. 10.06 (2) of the Supreme Court Rules is amended as follows:

SCR 10.06 **(2)** POWERS. The executive committee may exercise all the powers and perform all the duties of the board of governors between the meetings of the board except the executive committee shall not, unless otherwise authorized by the board of governors: amend the bylaws; make rules or regulations governing nominations or elections; prescribe regulations for proceedings before grievance committees; or initiate the taking of any referendum or poll of members of the association. The executive committee shall directly receive and act upon all reports of committees on disciplinary matters without reporting to the board of governors. The minutes relating to disciplinary matters shall be kept separate from the general minutes and shall be confidential. The executive committee shall prepare an annual budget for submission to the board of governors and shall perform such other duties as the board of governors may prescribe. Unless otherwise ordered by the board of governors, the executive committee shall not express publicly any opinion on any matter including legislation of major public interest or concern or of major importance to the members of the association. A ~~complete~~ summary of the general minutes of each meeting of the executive committee shall be ~~promptly printed in the Wisconsin bar bulletin, with a notation that any interested person may obtain a copy of the general minutes upon request to the secretary~~ provided to the membership in an official state bar publication.

SECTION 4. 10.09 (2) of the Supreme Court Rules is amended as follows:

SCR 10.09 **(2)** A financial statement showing assets, liabilities, receipts and disbursements of the state bar shall be ~~published in the state bar bulletin prior to the annual meeting provided annually to the membership in an official state bar publication.~~ A copy of the annual audit shall be filed with the supreme court.

SECTION 5. 10.12 of the Supreme Court Rules is renumbered as 10.12 (1), entitled "Official Publication," and amended as follows:

SCR 10.12 OFFICIAL PUBLICATION; NOTICE TO MEMBERS. **(1)** OFFICIAL PUBLICATION. The ~~Wisconsin bar bulletin~~ Wisconsin Lawyer magazine or its successor is the official print publication of the state bar of Wisconsin. ~~All official notices shall be published therein or mailed first class to members entitled thereto at their address of record. Such publication shall constitute notice to all members. The publication shall be sent by mail to all members at their address of record.~~ The state bar may designate electronic media as official publications for the purpose of providing notices to members.

SECTION 6. 10.12 (2) and (3) of the Supreme Court Rules are created as follows:

SCR 10.12 **(2)** NOTICE TO MEMBERS. The state bar shall publish notices required by supreme court rules or state bar rules and bylaws. Such publication shall constitute official notice to state bar members.

(3) PUBLICATION PLAN. The state bar board of governors shall approve a plan for how the state bar will publish notices to members

required by the supreme court rules or state bar rules or bylaws. That plan will be published in the Wisconsin Lawyer or its successor and on the state bar's website. The state bar will provide notice to members whenever the plan is amended.

SECTION 7. 10.13 (2) of the Supreme Court Rules is amended as follows:

SCR 10.13 **(2)** AMENDMENT OF BYLAWS. The provisions of the bylaws of the state bar of Wisconsin 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. When any change in the bylaws has been made by the board of governors the ~~secretary~~ executive director shall publish notice of the change, including a copy of the amendatory resolution, in ~~the Wisconsin bar bulletin~~ an official state bar publication pursuant to SCR 10.12 and shall file a certified copy thereof with the clerk of the supreme court. 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.

IT IS FURTHER ORDERED that notice of the above amendments of Supreme Court Rules 10.05(4)(a)5, 10.05(4)(g), 10.06(2), 10.09(2), 10.12, and 10.13(2) be given by a single publication of a copy of this order in the official publications designated in SCR 80.01, including the official publishers' online databases, and on the

Wisconsin court system's web site. The State Bar of Wisconsin shall provide notice of this order.

Dated at Madison, Wisconsin, this 24th day of June, 2014.

BY THE COURT:

Diane M. Fremgen
Clerk of Supreme Court

¶1 SHIRLEY S. ABRAHAMSON, C.J. (*concurring*). I join in adopting this order with two reservations and comments.

¶2 I caution that the text of the rules as amended by this petition does not fully and accurately reflect the State Bar's intentions and their submissions to the court. Under the prior rules, any person could obtain a complete copy of the minutes of the meetings of the Board of Governors and the State Bar's financial statement. The text of the rules adopted today limits access only to members of the State Bar. The Publication Plan states that a summary of the minutes will be available in Inside Track, which is available on the State Bar's website, wisbar.org, without a password. The Publication Plan reveals that the Financial Statement will be in the Wisconsin Lawyer, which has an online version that does not require a password.

¶3 I write so that non-Bar members reading the rules will not be misled into thinking they cannot get this information. I further conclude that any change in the Publication Plan reducing the ability of the public to get this information should be reviewed by the court prior to its adoption.

¶4 The rules do not say that the State Bar will make notice of all public rules hearings available to the public, although the State Bar, in response to a court question, stated its intention to make these notices available to the public as it has done in the past. Wisconsin Stat. § 751.12 requires the State Bar to publish notices of public hearings required by that statute. This statute does not encompass public hearings on rule matters that do not fall within § 751.12.

¶5 I write separately to make clear that the text of the rules, as amended, does not fully reflect the State Bar's obligation to keep non-members, as well as its members, informed. I concur based on my understanding, confirmed in written submissions to the court and testimony provided at the January 15, 2013 public hearing we conducted on Petition 12-09, In the Matter of Publication of Supreme Court Orders and Rules, that the State Bar intends to honor its obligation to keep non-members, as well as members, informed, will advise the court of any change to the Publication Plan that reduces public access to information.

