

# SUPREME COURT OF WISCONSIN

No. 19-14

---

**In the Matter of the Petition to Amend Supreme Court Rule (SCR) 10.01(1) and SCR 10.02(1), and to Repeal SCR 10.03(1), (2), (3), (4)(a), (5), and (6) - to Create a Voluntary State Bar of Wisconsin**

**FILED**

**JUL 1, 2019**

Sheila T. Reiff  
Clerk of Supreme Court  
Madison, WI

---

On May 2, 2019, Attorney Steven Levine,<sup>1</sup> filed this rule petition asking the court to abolish the mandatory bar and create a voluntary State Bar of Wisconsin ("State Bar"). This proposal would amend Supreme Court Rule (SCR) 10.01(1) and SCR 10.02(1), and repeal SCR 10.03(1), (2), (3), (4)(a), (5), and (6).

The court discussed this petition at closed administrative rules conference on June 6, 2019. Attorney Levine is a long time opponent of the mandatory bar. He has filed numerous lawsuits and at least five administrative rule petitions relating to the mandatory nature of the bar, the imposition of mandatory bar dues, and how those dues can be used.

The court has determined that this most recent rule petition is essentially duplicative of the rule petition Attorney Levine filed in 2017. See S. Ct. Order 17-04, (issued Apr. 12, 2018). Just last

---

<sup>1</sup> Along with Steven Glick, Daniel A. Graff, Daniel Hannula, Jon E. Kingstad, Robert Larsen, Paul E. Nilsen, Jack Rakowski, Joseph Redding, John Riester, Ryan D. Scherz, John Sobotik, James Thiel, and Daniel Waite.

term, we solicited public comment and conducted a public hearing on the question of mandatory State Bar dues. The matter was briefed, extensively, and on December 8, 2017, several members of the court met with leadership from the State Bar and advocates for a voluntary bar to discuss issues related to the mandatory bar.<sup>2</sup> The State Bar was receptive to a number of the concerns voiced during this proceeding as evidenced by the fact that on February 9, 2018, the State Bar's Board of Governors unanimously adopted a new policy whereby the State Bar would no longer use mandatory dues to fund direct lobbying activity. Following extensive deliberation, the court denied Rule Petition 17-04. Id.

Most of the arguments presented in this petition are the same as those raised in Rule Petition 17-04. The only new aspect of this rule petition is Attorney Levine's reference to a recent United States Supreme Court decision, Janus v. AFSCME, 585 U.S. \_\_\_\_, 138 S. Ct. 2448 (2018). Attorney Levine argues that Janus effectively renders the mandatory dues payments to the State Bar of Wisconsin unconstitutional. However, an administrative rules proceeding is not

---

<sup>2</sup> Then Justice Michael J. Gableman chaired the meeting which was attended by Justice Shirley S. Abrahamson; Justice Ann Walsh Bradley; Honorable Randy R. Koschnick, Director of State Courts; Honorable James A. Morrison, Circuit Court Judge for Marinette County, Chief Judge for District 8; Dean Stensberg, Deputy Director of State Courts for Management Services; Attorney Paul G. Swanson, then State Bar President; Attorney Chris Earl Rogers, then State Bar President-elect; Attorney Larry Martin, State Bar Executive Director; Attorney Lisa M. Roys, State Bar Public Affairs Director; Attorney Roberta F. Howell, State Bar Counsel; Attorney Steven Levine, Petitioner and Past-State Bar President; Attorney Douglas Kammer, Past-State Bar President; and Attorney James Boll, Past-State Bar President. Julie Anne Rich, Supreme Court Commissioner, served as recorder.

the proper forum in which to effectively request a substantive legal decision regarding the effect, if any, on SCR Ch. 10. Therefore,

IT IS ORDERED that the petition is denied.

Dated at Madison, Wisconsin, this 1st day of July, 2019.

BY THE COURT:

Sheila T. Reiff  
Clerk of Supreme Court

¶1 SHIRLEY S. ABRAHAMSON, J. (*dissenting*). I dissent.  
I would schedule a hearing on this matter.

¶2 REBECCA GRASSL BRADLEY, J. (*dissenting*). The majority summarily denies Rule Petition 19-14, without a hearing, because it "determined that this most recent rule petition is essentially duplicative of the rule petition Attorney [Steven] Levine filed in 2017" referencing Rule Petition 17-04. It isn't. Among other proposals, Rule Petition 17-04 asked the court to confine the payment of mandatory State Bar dues to the following activities and programs:

1. Preparing for and participating in rulemaking proceedings before the Supreme Court;
2. Administering the Fund for Client Protection;
3. Administering a program to aid lawyers with addictions or other personal problems which may affect their practices and clients;
4. Offering legal advice to Wisconsin lawyers concerning the requirements of SCR Ch. 20 and other ethical questions.
5. Other regulatory programs which may be specifically approved by the Supreme Court after hearing.

All other State Bar activities would be "supported by voluntary dues, user fees, or other sources of revenue, which shall be segregated from mandatory dues." In contrast, Rule Petition 19-14, as the majority acknowledges, asks the court to convert the mandatory bar into a voluntary one.

¶3 The majority's denial of this petition seems to stem from impatience with the petitioner (although thirteen attorneys join Attorney Levine in filing the current petition), rather than actual repetition of subject matter. The majority notes

"Attorney Levine is a long time opponent of the mandatory bar. He has filed numerous lawsuits and at least five administrative rule petitions relating to the mandatory nature of the bar, the imposition of mandatory bar dues, and how those dues can be used." Attorney Levine's persistence in filing petitions to reform the State Bar of Wisconsin, however, presents no reason to sidestep consideration of the constitutionality of compelling membership in, or subsidization of, employment-related entities like unions and bar associations. These issues have been the subject of much recent litigation in the federal courts, signaling the petition's timeliness.

¶4 Nevertheless, the majority dismisses the importance of Janus v. AFSCME, Council 31, 138 S. Ct. 2448 (2018), by suggesting that Janus is "the only new aspect" of Attorney Levine's pending petition, as if a decision of the United States Supreme Court is of no consequence in Wisconsin. In Janus, the Court held that forcing public employees to subsidize a union violates those employees' free speech rights. Id. at 2459-60. The Janus decision was released on June 27, 2018, two months after this court denied Rule Petition 17-04 on April 12, 2018.

¶5 Likewise, the majority does not mention that the constitutionality of compelled membership in the State Bar of Wisconsin, along with mandatory payment of dues, have been specifically challenged in Jarchow v. State Bar of Wisconsin, 19-CV-266, a case filed on April 8, 2019, and currently pending in the United States District Court for the Western District of Wisconsin. In their complaint, the Jarchow plaintiffs invoke

the First Amendment, as well as Janus, in requesting the district court to declare Wisconsin's mandatory bar unconstitutional.

¶6 Rather than dismissing Rule Petition 19-14 outright, with no consideration of its merits, I would hold it in abeyance pending a decision in Jarchow v. State Bar of Wisconsin. Certainly the asserted constitutional rights of Wisconsin's attorneys warrant greater attention than this court's hasty dismissal of a petition to vindicate them. Accordingly, I dissent from the majority's denial of Rule Petition 19-14.

¶7 I am authorized to state that Justice DANIEL KELLY joins this opinion.

