

**STATE OF WISCONSIN
SUPREME COURT**

In the matter of:

**The petition of the State Bar of Wisconsin
proposing revisions to SCR 10.03(3),
relating to classes of membership**

PETITION FOR REVISION OF SUPREME COURT RULE 10.03(3)

To: The Honorable Justices of the Supreme Court

The State Bar of Wisconsin petitions the Court for a revision to Supreme Court Rule 10.03(3), relating to classes of membership in the State Bar.

On December 8, 2006, Ronald G. Bernoski, a U.S. administrative law judge, filed petition 06-09 with the Wisconsin Supreme Court, seeking amendments to SCR 10.03(3)(a) to permit federal administrative law judges (ALJs) to claim judicial status as members of the State Bar of Wisconsin. On March 9, 2007, the State Bar's Board of Governors voted to oppose that petition. The Supreme Court held a hearing on the petition on April 12, 2007, but did not dispose of the petition after the hearing. At the open administrative conference following the hearing on April 12, 2007, the Court asked the State Bar to study the membership classification of state and federal ALJs and report back to the Court with a recommendation.

On September 1, 2007, State Bar President Thomas Basting, Sr. appointed a State Bar Membership Categories Committee to study the issue further. Committee members included: Kent Carnell, Madison, chair; James Alexander, Madison; Ronald Bernoski, Milwaukee; George Brown, Madison; Margaret Carlson, Madison; Lori Gendelman, Milwaukee; G. Jeffrey George, La Crosse; David Hass, Madison; John Kosobucki, Madison; Jacquelynn Rothstein, Madison; and Keith Sellen, Madison.

On May 7, 2008, the committee presented its recommendations to the Board of Governors. On September 12, 2008, the Board of Governors approved those modifications, which are presented to the Court in this petition. The Board of Governors requests that the Supreme Court modify Supreme Court Rule 10.03(3) so that:

1. The class of judicial members is modified to explicitly state those judicial officials who are eligible for judicial membership. This restatement of eligible officials explicitly includes, for the first time, court of appeals staff attorneys and federal

administrative law judges. In general, the officials included in this category are prohibited from the private practice of law.

2. The petition also specifies that no inactive member may transfer to emeritus status if they have not actively practiced law in Wisconsin or another state during the previous two years, unless the Board of Bar Examiners certifies the attorney has met the applicable CLE requirements for transfer to active status and the Supreme Court has approved the transfer.

PROPOSED AMENDMENTS:

SCR 10.03(3) Classes of membership. (a) The members of the state bar are divided into 4 classes: active members, judicial members, inactive members and emeritus members. The class of active members includes all members of the state bar except the judicial members and inactive members. The class of inactive members includes those persons who are eligible for active membership but are not engaged in the practice of law in this state and have filed with the secretary of the association written notice requesting enrollment in the class of inactive members. ~~Judges of courts of record, full-time family court commissioners, full-time court commissioners, U.S. bankruptcy judges, U.S. magistrate judges~~ The class of judicial members includes the following persons: supreme court justices, court of appeals judges, circuit court judges, full-time circuit court commissioners, full-time municipal court judges, supreme court commissioners, court of appeals staff attorneys, federal district court judges, federal appellate court judges, federal bankruptcy judges, federal magistrate judges, federal administrative law judges, and retired justices and judges who are eligible for temporary judicial assignment and are not engaged in the practice of law. ~~are classed as judicial members, except that a~~ Any judicial member may elect to become an active member with all rights of active membership except to hold office as an officer or governor or to practice law. The class of emeritus members includes those persons who are either active or inactive members in good standing but who are at least 70 years of age and have filed with the executive director of the association a written notice requesting enrollment in the class of emeritus members. An emeritus member has all the privileges of membership in the state bar and need not pay membership dues for the years following the year in which he or she attains the age of 70.

(b) Any inactive member in good standing and any judicial member who is no longer serving in a judicial office may change his or her classification to that of an active member by filing with the secretary a written request for transfer to the class of active members and by paying the dues required of active members. No inactive member who has not actively practiced law in this state or in another state during the last 10 years may be transferred to active membership until the transfer is approved by the supreme court except a judicial member who is no longer serving in a judicial office shall be classified as an active member upon his or her written request.

(bm) Any inactive member in good standing may change his or her classification to that of an emeritus member if otherwise qualified to become an emeritus member provided that no inactive member who has not actively practiced law in this state or in another state during the last two years may be transferred to emeritus status until the Board of Bar Examiners certifies that the member has completed the continuing legal education requirements required for transfer to active status and the transfer is approved by the supreme court.

RATIONALE:

Under the proposed amended judicial membership class rule, the types of members listed include only those members who serve in a judicial capacity and are not allowed to practice law by rule, statute, or constitution in addition to their adjudicative responsibilities. Some potential types of members that engage in adjudicative type responsibilities but are not included in the class of judicial members are state administrative law judges because they are allowed to practice law in addition to their adjudicative responsibilities. The proposed amendment will replace outdated and ambiguous language with clearer membership types within the class.

Under the proposed amended emeritus membership class rule, those members of the State Bar who have been classified as inactive, under which they cannot practice law, can no longer transfer to emeritus status and therefore practice law without specific approval from the Board of Bar Examiners. Although this transfer is not a regular practice, it has happened frequently enough that this language needs to be adopted in order to prevent lawyers who have taken little or no CLE in previous years from practicing law in Wisconsin.

Respectfully submitted, this 31st day of October, 2008.



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