

SUPREME COURT OF WISCONSIN

NOTICE

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No. 07-10, 07-13

**In the matter of the Petition for Revision of
SCR 10.04 Concerning the Officers of the State
Bar of Wisconsin**

FILED**FEB 12, 2008**

**In the matter of a petition to review State Bar
bylaw amendment**

David R. Schanker
Clerk of Supreme Court
Madison, WI

Pending before this court are two related regulatory matters. On July 18, 2007, the State Bar of Wisconsin (State Bar) filed a petition asking the court to amend Supreme Court Rule 10.04 to limit the terms of office of its president and chairperson of the board of governors each to a single term. On September 21, 2007, Attorney Steven Levine filed a petition pursuant to SCR 10.13(2), asking this court to review a State Bar bylaw amendment proposing changes to the geographic requirements imposed on certain State Bar candidates.¹

¹ SCR 10.13(2) provides that 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. When any change in the bylaws has been made by the board of governors, the notice and a copy of the amendatory resolution is published in the Wisconsin bar bulletin and a certified copy is filed with the clerk of the supreme court. No court action is required if there is no challenge to a bylaw change.

Because the bylaw amendment derives from the same initiative giving rise to the State Bar's petition to amend Supreme Court Rule 10.04, the court and the parties agreed it was appropriate for the court to consider these two matters together.

A public hearing was held on December 10, 2007. State Bar President Thomas J. Basting, Sr., presented the State Bar's petition. Attorney Levine appeared and testified in opposition to the petition. Attorney Levine then presented his petition urging the court to reject the proposed bylaw change.

At the ensuing open administrative conference, the court voted, 4-3, to grant the State Bar's rule petition limiting the terms of office of the president and chairperson of the board of governors each to one term.² With respect to the bylaw amendments, the court noted that the proposed changes to sections one through four of the bylaws were largely stylistic in nature. The court approved those changes with minimal discussion. However, section 5 of the proposed bylaws would have provided as follows:

Section 5. Regional Diversity of Officers. In order to encourage participation by lawyers throughout the State in the leadership of the State Bar, any year's nominees for the office of President-Elect shall be from only one of four areas within the State of Wisconsin. The area designated for a given year shall be on the rotation specified herein. The four geographic areas are (a) District 2 — the Milwaukee area, (b) District 9 — the Madison area, (c) District

²Chief Justice Abrahamson, Justices Bradley, Prosser and Butler, Jr. voted to adopt the petition. Justices Crooks, Roggensack and Ziegler opposed the petition.

6 — the Waukesha area, and (d) all other State Bar Districts — designated as the Out-State area. A nominee's area is determined by where he or she primarily practices law. The area from which a candidate(s) shall be eligible to run in the election for President-Elect shall rotate each year in the following order: District 2, District 9, and then Out-State Districts, with District 6 being added following the Out-State area in every third rotation, with such addition of District 6 being made for the April 2009 election. If no candidates are available for nomination from the designated area in a given year, candidates from the area for the succeeding year shall be solicited and the rotation moved up to reflect the area from which the candidates are nominated. This rotation throughout the State shall apply to candidates chosen by the nominating committee and those petitioning for nomination. The State Bar shall maintain a schedule of this rotation and the District eligible for each annual election for President of the State Bar.

The State Bar explained that this proposed amendment was intended to codify the State Bar's traditional practice and to protect the ability of out-state attorneys to run for office without opposition from attorneys from the Milwaukee or Dane County areas. Attorney Levine countered that the amendment would preclude interested candidates from any county from running for State Bar office for several years.

After some discussion about the appropriate standard of review applicable to bylaw amendments, the court voted to reject proposed section 5 in its entirety. Justice Prosser dissented from this decision, noting that while he did not support proposed Section 5, he considered it ill-advised for the court to involve itself with internal bar governance.

Accordingly, effective the date of this order, Supreme Court Rule SCR 10.04 (3m) is created to read:

10.04 (3m) Term of Office. The office of president and chairperson of the board of governors shall be for one term only. The offices of secretary and treasurer may be held for more than one term.

IT IS FURTHER ORDERED that effective the date of this order, Article II, Section 1 of the State Bar Bylaws is amended to read:

Section 1. Nominations. The President-Elect, the Secretary and the Treasurer of the State Bar shall be elected from a list of candidates nominated in the following manner ~~herein prescribed.:~~

(a) The President of the Association with approval of the Board of Governors shall appoint ~~A~~ a committee of five members to nominate candidates for said offices to be voted on at the next annual election ~~shall be appointed by the President of the Association with the approval of the Board of Governors.~~ The nomination committee shall be approved at the first regularly scheduled Board meeting following the annual convention. ~~Such report~~ The committee shall name one issue a report naming two or more ~~candidates nominated by the committee~~ nominees for the Office of President-Elect, two or more ~~candidates nominated~~ nominees for the Office of Secretary and two or more ~~candidates nominated~~ nominees for the Office of Treasurer. Before making its report, the committee shall solicit from the membership the names of members interested in seeking nomination to any office scheduled for election. The committee shall make its report no later than December 15 in each year.

(b) Other persons may be nominated for any of said offices by petitions signed in the case of each candidate. Each nominee must provide a petition signed by not less than one hundred active members of the Association. ~~and The petition must be filed in the Office of the Executive Director on or before the first business day of February of the year of the election, provided that before the filing of such petition.~~ Before such a petition may be filed, the nominee must consent in a written statement shall be endorsed thereon by the nominee to the effect that the member consents to nomination for the office designated in the petition.

IT IS FURTHER ORDERED that Article II, Section 3 of the State Bar Bylaws is amended to read:

Section 3. Election of Chairperson of the Board of Governors. The Board shall elect a Chairperson of the Board of Governors shall be elected by the Board from its members at its last regular meeting each fiscal year. The President shall appoint a nominating committee from the governors ~~at the second to last regular Board meeting of the fiscal year.~~ The committee shall nominate one or more candidates for this office. ~~at the second to last regular Board meeting of the fiscal year.~~ Those eligible for nomination and election to this office shall be are: all ~~who are then members of the~~ current Board members, including members whose second terms expire that June, except for the President and President-Elect. While serving ~~in that office as~~ as Chairperson of the Board, the Chairperson of the

Board shall be a governor at large and no longer a district governor.

IT IS FURTHER ORDERED that Article II, Section 4 of the State Bar Bylaws is amended to read:

Section 4. Commencement of Term of Office. The terms of all out-going officers of the Association and the Chairperson of the Board of Governors shall end, and the term of their successors shall commence, on the first day of July.

IT IS FURTHER ORDERED that the proposed creation of Article II, Section 5 of the State Bar Bylaws as set forth above is rejected by the court in its entirety.

IT IS FURTHER ORDERED that notice of these amendments of Supreme Court Rule 10.04 and the State Bar Bylaws 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 12th day of February, 2008.

BY THE COURT:

David R. Schanker
Clerk of Supreme Court

¶1 DAVID T. PROSSER, J. (*concurring*). I concur reluctantly in the court's decision to approve the petition of the State Bar of Wisconsin to limit the terms of office of the bar president and chairperson of the board of governors, respectively, to a single term.

¶2 As a matter of personal preference, I oppose the State Bar's petition; yet I have voted for it because of my belief that the Supreme Court should not micromanage the governance of the bar. I have voted against Attorney Levine's petition for the same reason, even though I see some merit in it.

