
In the Matter of
Modification of the Emeritus Status,
Penalties for Late Payment of Dues and Fees,
Technical Corrections, and
Continuing Education Requirements

MEMORANDUM
20-____

The State Bar of Wisconsin (the “State Bar”) petitions the Wisconsin Supreme Court (the “Court”) to amend Supreme Court Rule 10.3 (SCR 10.03) provisions relating to Membership in the State Bar, principally for the purpose of changing the Emeritus membership class. This petition was approved by the Board of Governors by a vote greater than 60 percent on September 25, 2020.

This is the second time in recent years that changes proposed by the State Bar as to the Emeritus membership class have come before this Court. The last time the Court rejected by order dated June 24, 2014 the proposed changes then requested in SCR Petition 13-09, and returned the petition to the State Bar for further consideration.

In response, various State Bar Presidents, including Former Presidents Fran Deisinger, Paul Swanson, Christopher Rogers, and Jill Kastner appointed an Emeritus Task Force to study and recommend proposed changes. This Task Force was broadly representative of the State Bar and included two past presidents of the Senior Lawyers Division, two then-current members of the Senior Lawyers Division Board, a Retired Supreme Court Justice, several representatives of the Non-Resident Lawyers Division, several current and past Presidents and other Officers of the State Bar, and several State Bar Members with extensive Pro Bono experience.

The Emeritus Task Force was charged with taking a “fresh look” at the Emeritus membership class, its purposes and history, and recommending proposals to the State Bar Board of Governors, and ultimately to the Court, as appropriate.

From its very first meeting, the Emeritus Task Force identified significant issues or problems with the current Emeritus membership class, including the following:

1. The current Emeritus membership class is the only membership class that includes both retired/inactive and actively practicing lawyers. The needs of

and requirements placed upon these two different types of members are inherently different, and often inconsistent. It also presents uncertainty about a lawyer's authority to practice, creates confusion for the courts and the public, and allows actively practicing lawyers to avoid Continuing Legal Education ("CLE") requirements. Because the law and the practice of law are constantly changing, ALL actively practicing attorneys need to keep up as a matter of consumer protection – and regardless of age. On the other hand, it is not appropriate for *truly* retired or inactive attorneys to be required to fulfill CLE requirements.

2. Wisconsin is “out of step” with other jurisdictions in allowing actively practicing Emeritus attorneys to continue to practice without taking CLE. For example, the ABA Model Rule for Minimum Continuing Legal Education (February 2017), was adopted to “maintain public confidence in the legal profession and the rule of law, and to promote the fair administration of justice . . .” and provides that “All lawyers *with an active license to practice law* in this Jurisdiction shall be required to earn an average of fifteen MCLE credit hours per year during the reporting period established in this Jurisdiction.” [Emphasis added.]
3. Actively practicing current Emeritus members pay no State Bar dues, even though the State Bar incurs most of its costs to support actively practicing attorneys. The State Bar's budget is a “pay as you go” budget – there is no reserve built in (and never has been) to cover expenses related to currently actively practicing senior attorneys who happen to be over a certain age. In contrast, the State Bar generally provides far fewer services to senior lawyers who do not actively practice law.
4. The current rules by which an Inactive member may become an Emeritus member are confusing and cumbersome. Since the current Emeritus membership class includes actively practicing as well as inactive attorneys, attorneys who wish to transfer from an Inactive membership class to an Emeritus membership class must currently make up past CLE requirements even if they do not intend to practice law in the future. This makes it very difficult (if not impossible) for many Inactive members (including many Non-Resident Lawyer members) to convert from an Inactive membership class to the current Emeritus membership class. This can be grossly unfair and confusing. Some members would like to keep their title or identity as a Wisconsin attorney but are finding themselves at a crossroads in which they feel they must relinquish their license and therefore no longer be members of

the Association. We would like to remedy that problem and provide them a path to continued membership, thus a “win-win.”

5. The use of the term “Emeritus” for actively practicing attorneys is confusing, since the common dictionary definition of "Emeritus" implies and connotes an honorific title for "retired" professionals, not someone still actively practicing their profession.
6. Because of longer life expectancies, better health, and rules and court decisions banning discrimination against older workers, many more attorneys now practice law at older ages. 75 has indeed become the new 70. The Task Force had seen that in the self-selection of our older members, and that was further demonstrated when looking at The Centers for Disease Control and Prevention (“CDC”) life expectancy data:
 - Of State Bar members age 70 to age 74 (Oct. 2018), approximately 22% of them were Active status and approximately 59% requested Emeritus status.
 - At age 75 and older, approximately 6% continued their Active status and approximately 83% then requested Emeritus status.
 - Per CDC statistics of life expectancy:
1975 – 72.6 years (all) / 68.8 (men) / 76.6 (women)
2017 – 78.6 years (all) / 76.1 (men) / 81.1 (women)

This background information above was referenced as the Task Force discussed the consideration of Senior Active status commencing at age 75.

Taking these and other concerns into consideration, the Emeritus Task Force and the State Bar Board of Governors now propose, a) that the Emeritus membership class become a totally inactive membership class available to attorneys over the age of 70, b) that actively practicing attorneys between 70 and 75 be required to remain Active members, and c) that actively practicing attorneys over 75 become Senior Active members. More specifically, under this proposal,

1. There is **NO PROPOSED CHANGE** for Emeritus status State Bar members who are fully retired or inactive: Any inactive or fully retired attorney over age 70 may request to become Emeritus, and will then not be required to pay State Bar dues or take CLE credits, just like today.

2. There is **NO PROPOSED CHANGE** for Inactive status members under age 70, who will still continue to pay 50% of the State Bar dues but will not be required to take CLE credits.
3. State Bar members between the ages of 70 and 75 who are actively engaged in the practice of law will continue as Active status members, and will be required to pay full State Bar dues and take full CLE credits (30 total credits every two years, which must include 3 ethics credits).
4. When an actively practicing lawyer reaches age 75, he or she will automatically convert from Active status to Senior Active status, meaning that he or she will only be required to pay 50% of the State Bar dues and will only be required to take 15 total CLE credits every two years (which must include 3 ethics credits).
5. Since the new Emeritus membership class will be an inactive status, an Inactive status member upon request to do so at age 70 will be allowed **DIRECTLY** to convert to Emeritus status without having to make up CLE credits -- something that has been troublesome for many of our State Bar Inactive members over time, including many members that are Non-Resident Lawyers. And as mentioned earlier, this also will allow for a “win-win” for older attorneys to provide them a seamless way to continue their ongoing membership and their title/identity as a Wisconsin attorney.
6. To simplify the transition for current Emeritus status members, the State Bar Board of Governors feels that existing Emeritus status members as of the effective date of the new rule should be given legacy status and thus treated as if under the existing rule (the “current rule”). In addition to the administrative ease, the Task Force feels that current Emeritus members requested and were granted Emeritus status based on the current rule, and thus should be entitled to rely on that current rule; therefore, the new rule will be implemented on a going forward basis only.
7. Notwithstanding the new rule, either Inactive status members or Emeritus status members (retired/inactive under the new rule) will be allowed to

practice law with and for a “qualified pro bono program” authorized in SCR 31.01(12), so long as they meet the training, competence, and other vetting requirements of and are supervised by such organizations.

8. Determining whether an attorney is engaged in the practice of law will be informed by existing SCR 20, Section 5. In general, Inactive status or Emeritus status (retired/inactive) attorneys will still be able to engage in many “retirement activities” such as serving on boards of directors and teaching CLE courses, among others.

In short, the Emeritus Task Force and the State Bar Board of Governors believes that the recommended proposal balances a number of considerations, including:

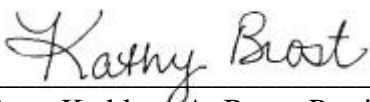
- Unchanged and substantial benefits for inactive and fully retired Emeritus members;
- Reasonable CLE requirements for actively practicing attorneys;
- Identical treatment for all actively practicing attorneys under age 75;
- Reasonable transition rules for existing Emeritus members;
- Reasonable opportunity, certification, and training for Inactive status or Emeritus status attorneys who wish to participate in “qualified pro bono programs” that provide meaningful training and supervision for the services such attorneys would provide;
- Retirement options to provide services that the Court has determined do not constitute the unauthorized practice of law (such as teaching CLE courses, serving on boards of directors, to name a few).

While proposing changes to SCR 10.03 to align with that mentioned above, it also seems prudent at this time to include and make additional modification to SCR 10.03 as proposed by the Board of Governors Committee on Governance. Their modifications are simply meant to address some clean up in language noticed by them over time. It also helps to clarify in Supreme Court Rule 10.03 (6m) that the State Bar may impose penalties. It is common practice for the State Bar to assess a \$50 late fee for annual State Bar Dues and Court Assessments that are due on July 1st but have not been made by August 31st (extended to September 30th here in Calendar 2020 due to the COVID-19 situation). This helps to incentivize members to pay timely and still affords them an opportunity to avoid suspension

by paying in full by October 31st. If their situation leads them into suspension and they subsequently request reinstatement, it also needs to be clearly noted they remain liable for that late fee.

Accordingly, the State Bar of Wisconsin asks the Wisconsin Supreme Court to grant its petition.

Respectfully submitted this 19th day of October, 2020




Atty. Kathleen A. Brost, President



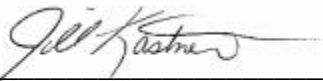
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