

SUPREME COURT OF WISCONSIN

No. 03-05

In the matter of the definition of the Practice of Law and the Unauthorized Practice of Law, Appointment of Committee to promulgate rules, and establishment of a regulatory system

FILED

FEB 28, 2005

Cornelia G. Clark
Clerk of Supreme Court
Madison, WI

On April 23, 2003, the Board of Governors of the State Bar of Wisconsin filed a petition requesting the court appoint a committee to submit specific recommendations for the adoption of Supreme Court Rules defining the practice of law and unauthorized practice of law, and for the establishment of a comprehensive system to administer the guidance and regulation of non-lawyers engaged in limited practice of law. A public hearing was conducted on December 17, 2003 at which numerous persons appeared.

At the open administrative conference following the hearing the Court tentatively approved the petition subject to consensus on an acceptable mission statement for the proposed committee. The Court directed the petitioners to consult with interested persons and to file a supplemental petition, refining a mission statement for the proposed committee.

A supplemental petition was filed on February 13, 2004. A second public hearing was conducted on March 18, 2004. At the conclusion of the second hearing, the court deferred a decision pending further consideration of the petition. The court discussed the petition at an open administrative conference on December 16, 2004, at which it resolved to deny the petition for the reasons set forth in a memorandum to interested parties dated February 28, 2005, which accompanies and is incorporated by reference into this order. Therefore,

IT IS ORDERED that the petition filed by the Board of Governors of the State Bar of Wisconsin regarding the definition of the Practice of Law and the Unauthorized Practice of Law, Appointment of Committee to promulgate rules, and establishment of a regulatory system is denied.

Roggensack, J. dissenting.

Dated at Madison, Wisconsin, this 28th day of February, 2005.

BY THE COURT:

Cornelia G. Clark
Clerk of Supreme Court

PATIENCE D. ROGGENSACK, J. (concurring in part and dissenting in part.

I concur in the thanks expressed to all who participated in Petition 03-05. I also agree with the recommendation to collect more information to assist the court and the bar in addressing the concerns expressed in the Petition and in the many responses the court received. However, I prefer to stay a decision on the Petition while this process proceeded. Therefore, I dissent from the court's order denying Petition 03-05.

MEMORANDUM

DATE: February 28, 2005

TO: Board of Governors of the State Bar of Wisconsin

FROM: Wisconsin Supreme Court

SUBJECT: Rules Petition 03-05: In the Matter of the Definition of the Practice of Law and the Unauthorized Practice of Law, Appointment of a Committee to Promulgate Rules, and Establishment of a Regulatory System

This Supreme Court Rules Petition, 03-05, *In the matter of the definition of the Practice of Law and the Unauthorized Practice of Law, Appointment of Committee to promulgate rules, and establishment of a regulatory system*, was the culmination of substantial work by many individuals and generated significant public reaction. The court deems it appropriate in this instance to provide information and guidance to the petitioners regarding the court's decision to deny the petition.

First, the court expresses its appreciation to the petitioners, and to the members of the State Bar of Wisconsin's Consumer Protection and Education Committee, for bringing this matter to the court's attention. The court also appreciates the public response to the Petition that it received in the form of written comments and testimony at the court's public hearings from professional organizations, state agencies, attorneys, public interest groups, advocates for vulnerable citizens, concerned citizens, and others.

The court appreciates the concerns that prompted the filing of this Petition. The unauthorized practice of law is prohibited in Wisconsin, by rule and by statute. The difficulty is defining what should constitute the unauthorized practice of law. The practice of law is a dynamic and evolving discipline, and the boundaries that mark the distinction between the practice of law and other professional disciplines are hard to delineate in the professional service marketplace. In addition, many believe that the legal needs of lower income and vulnerable persons are not being adequately met, and are seeking ways to deliver legal services at lower costs.

We appreciate the difficulties inherent in crafting an acceptable definition of the "practice of law" that will serve our shared desire to protect the public, without adversely affecting the delivery of critical legal services to Wisconsin's vulnerable citizens, or intruding upon the routine business practices of other professions.

The court takes seriously the petitioners' assertion that it has received increasing numbers of complaints from victims of fraudulent practices allegedly committed by non-lawyers offering legal services. However, before this court can contemplate a recommendation that it establish a regulatory framework to administer and enforce rules on the unauthorized practice of law, it needs demonstrable evidence that additional regulation is truly needed. The court recommends that the State Bar of Wisconsin, perhaps in conjunction with the Board of Bar Examiners, the Office of Lawyer Regulation, the Department of

Regulation and Licensing, and other agencies that may receive consumer complaints about unauthorized practice of law, begin to document complaints or concerns received from members of the public. Quantifiable evidence that a problem not only exists, but the nature of the problem and its extent, will be of significant value to this court. In addition, collaboration and communication between the State Bar of Wisconsin, court agencies, and the Department of Regulation and Licensing, will help refine the boundaries of regulatory systems - existing and proposed - and ensure that licensed professionals are not subjected to duplicative regulation.

We also ask that the State Bar assist this court by identifying emerging consumer protection issues involving the practice of law. The practice of law is changing, and technology is evolving rapidly. For example, the prevalence of "on-line" legal advice and legal forms on the Internet is a comparatively recent development with significant implications for the "unauthorized practice of law."

The court is also interested in the progress of other states' on this subject, such as Washington State's recently created "Practice of Law Board." See Wash. State Court Rules, General Rule 24 and 25. The court encourages the State Bar to monitor and assess the success of promising models.

Although we deny the Petition today, we anticipate that the State Bar might establish its own task force to study the issue and submit a petition addressing the issues set forth herein at some future date. On-going discussion and information

gathering are critical to determining the best way to serve the public. In May 2005, the joint Annual Convention of the State Bar of Wisconsin and Judicial Conference will include a session addressing the Unauthorized Practice of Law. We hope that this venue as well as others will provide opportunities for continued discussion of this important issue.

Again, the court thanks all the participants for their efforts in this matter.