
In the matter of:

13-07

The petition of the State Bar of Wisconsin proposing revisions to SCR 10.04 and SCR 10.05 relating to Officers and the Board of Governors of the State Bar of Wisconsin.

BRIEF IN OPPOSITION TO STATE BAR RULEMAKING PETITION
By Steven Levine

FILED

DEC 05 2013

CLERK OF SUPREME COURT
OF WISCONSIN

FACTS

On July 3, 2013, the State Bar of Wisconsin submitted a rulemaking petition to the Court requesting amendment of Supreme Court rules to grant the State Bar the authority to remove Bar officers and members of the Board of Governors. At the same time, the Bar provided the Court with copies of bylaws adopted by the Board of Governors on June 12, 2013, allowing the Board to remove officers and governors for conduct “contrary to the best interest of the State Bar.” These bylaws, therefore, were adopted prior to the Bar’s procuring the authority to remove officers and governors – the very authority it now seeks from the Court in this rulemaking docket. Those bylaws adopted on June 12, 2013, read:

“Article II, Section 7(b) Removal by Board of Governors. An officer shall be removed if the officer is unable or unwilling to fulfill his or her duties, or if the officer’s conduct while in office is contrary to the best interest of the State Bar as determined by an affirmative vote of 75 percent of the total membership of the Board of Governors (including the officer subject to the motion to remove). Before any vote on the motion, notice of the motion to remove and of the grounds alleged against the officer, and an opportunity to be heard by the Board must be given to the officer.

Article III, Section 10(b) Removal by Board of Governors. A governor shall be removed if the governor is unable or unwilling to fulfill his or her duties, or if the governor engages in conduct which is contrary to the best interest of the State Bar as determined by an affirmative vote of 75 percent of the total membership of the Board (including the officer subject to the motion to remove). Before any vote on the motion to remove the governor, notice of the motion and of the grounds alleged against the governor, and an opportunity to be heard by the Board must be given to the governor.”

The Supreme Court rule amendments sought by the State Bar in this docket to authorize the Board of Governors to remove State Bar officers and governors are:

“SCR 10.04 Officers. (4) Officers may be removed from office and vacancies filled in

accordance with the bylaws.

SCR 10.05 Board of governors. (3) Term; qualifications; nomination and election. The term of office of each elected member of the board of governors is 2 years, commencing on July 1 next following his or her election. No person is eligible to vote in a district for governor or to serve on the board of governors from a district unless he or she is an active member of the association and maintains in the district his or her principal office for the practice of law. No person is eligible for election to the board of governors for more than 2 consecutive terms. The eligibility of any person to serve as a member of the board of governors from any state bar district ceases upon removal of the person's principal office for the practice of law from the district. Nominations, and elections, and filling of vacancies of members of the board of governors shall be conducted in accordance with the provisions of the bylaws. Governors may be removed from office and vacancies filled in accordance with the bylaws."

The rationale for the authority to remove officers and governors offered in the State Bar's supporting memo reads as follows:

"Removal

SCR 10.03 provides that, "No judicial or inactive member may practice law in this state or *hold office* or vote in any election conducted by the state bar. [Emphasis added]" One additional restriction can be found in SCR 10.04 (1), "Only active members of the state bar residing and practicing law in Wisconsin are eligible to serve as president or president-elect of the association." Should a sitting officer of the Bar be suspended from practice, or commit misconduct while in office, the Bar has no recourse to act in the best interests of the organization should removal prove to be necessary. (emphasis added)

The Board of Governors adopted amendments to the bylaws to include a procedure for the removal of an officer or member of the board if conduct while in office is contrary to the best interest of the State Bar. A vote of 75% of the membership of the Board would be required and the officer or governor would be given an opportunity to be heard.

The State Bar has considered provisions of other state, local and national bar associations as well as other associations and organizations and developed the language and due process protections approved in June 2013. In support of this petition, please find enclosed amendments to related State Bar Bylaws. These bylaws revisions were adopted by a 38-2 vote of the Board of Governors on June 12, 2013. (Attachment A)"

ARGUMENT

At most, the Court should grant the State Bar's request for authority to remove only those officers or governors whose licenses to practice law have been revoked or suspended. The Court should not grant any broader removal authority, as that authority would be dangerously vague, a threat to First Amendment rights, undemocratic, and

unnecessary. If the Court does wish to grant limited removal authority to the Bar, State Bar proposed SCR 10.04(4) and the last sentence of State Bar proposed SCR 10.05(3) respectively should be amended to read: "**SCR 10.04 Officers.** (4) Officers whose licenses to practice law have been revoked or suspended may be removed from office and their vacancies filled in accordance with the bylaws," and "Governors whose licenses to practice law have been revoked or suspended may be removed from office and their vacancies filled in accordance with the bylaws."

I. The Requested Authority to Remove Officers and Governors is Dangerously Vague and Expansive.

As a rationale for its request for authority to remove an officer or governor, other than one whose license has been suspended or revoked, the State Bar offers a single narrow example of need: "Should a sitting officer of the Bar be suspended from practice, or commit misconduct while in office (emphasis added, Bar supporting memo), the Bar has no recourse to act in the best interests of the organization should removal prove to be necessary." The Bar first seeks the authority to remove an officer or governor who commits "misconduct" – with no definition or examples or what constitutes misconduct. Then, at its meeting of June 12, 2013, the Board of Governors adopted (without the authority to do so) bylaws which allow it to remove an officer or governor for conduct "contrary to the best interest of the State Bar." At the same meeting, the Board of Governors voted down a proposed amendment to those bylaws which would have prevented removal of an officer or governor for "speech, association, activity, or advocacy which is protected by the First Amendment to the United States Constitution or the Free Speech Clause of the Wisconsin Constitution."

So, the conduct for which an officer or governor may be removed under the State Bar's requested authority has expanded from license suspension or revocation to "misconduct" to conduct "contrary to the best interest of the State Bar," to include "speech, association, activity, or advocacy which is protected by the First Amendment to the United States Constitution or the Free Speech Clause of the Wisconsin Constitution" -- an exponential expansion of undefined and arbitrary authority. Whew!

Removal of a governor who no longer resides in his or her district or of a governor whose license to practice has been suspended or revoked present situations where definite, objective criteria can be applied. But to allow the Board of Governors to remove officers or governors for "misconduct," conduct "contrary to the best interest of the State Bar," including "speech, association, activity, or advocacy which is protected by the First Amendment to the United States Constitution or Free Speech Clause of the Wisconsin Constitution" is dangerously subjective – with no criteria to apply. Such authority easily can be used to suppress divergence of thought and action by officers or governors. A lack of conformity has not been a serious problem for the State Bar.

If the State Bar could show a pressing need for authority to remove an officer or governor, it might have a better argument. But its memo in support of the 13-07 rulemaking petition lists no examples (in the past 35 years of my experience with the State Bar) in which such authority might or should have been used. In fact, the State Bar

cites no examples in its entire history of an officer or governor whose license to practice law was suspended or revoked. As discussed below, the removal authority requested by the State Bar – whether by intent or effect – constitutes little more than an intimidation of officers or governors who dare to challenge State Bar orthodoxy.

II. The Removal Authority Requested by the State Bar Presents a Danger to the First Amendment Rights of Officers and Governors.

The amendments to SCR 10.04(4) and 10.05(3) proposed by the State Bar in this docket grant the State Bar carte blanche authority to adopt any bylaws it wishes, unlimited by any constraints whatsoever, to remove officers or governors. This authority would permit the Board of Governors (a governmental or quasi-governmental body) to remove an officer or governor for the exercise of his or her rights of free speech, association, advocacy, or activities which are protected by the First Amendment to the United States Constitution or Free Speech Clause of the Wisconsin Constitution. And the Board of Governors has indicated that it wants the power to do just that.

At its meeting of June 12, 2013, the board decisively voted down (37-3) an amendment to the bylaws adopted at that meeting and quoted at page one of this brief (Please see minutes attached to this brief, pages 9 and 10.), which amendment reads as follows:

"Conduct . . . which is contrary to the best interest of the State Bar' does not include speech, association, activity, or advocacy which is protected by the First Amendment to the United States Constitution or the Free Speech Clause of the Wisconsin Constitution."

Thus, a Governor or officer may be removed under the quoted bylaws and under the authority now retroactively requested by the State Bar for conduct protected by the First Amendment: advocating a voluntary bar; opposing a State Bar position before this Court; supporting legislation opposed by the State Bar; being a member of a group – political or otherwise – which is distasteful to the Board of Governors, pointing out wasteful or inappropriate State Bar spending to the membership, etc.

This Court should not allow the Board of Governors to remove a governor or officer for the exercise of his or her First Amendment rights, which is precisely what the open-ended authority requested by the State Bar in this docket would allow. Even if that authority were never to be used, its existence would serve as an ominous threat to the independence of officers and governors who wish to exercise their First Amendment rights in ways displeasing to the State Bar – which may well be its purpose.

If the Court does decide to grant authority to the State Bar to remove officers and governors for reasons other than license suspension or revocation, the Court should provide a Bill of Rights for officers and governors by adding the following sentence to the Bar's proposed amendments of SCR 10.04(4) and 10.05(3): "The State Bar may not remove an officer [SCR 10.04(4); the word "governor" replaces "officer" in SCR 10.05(3)] because of his or her speech, association, advocacy, or activity which is protected by the First Amendment to the United States Constitution or the Free Speech

Clause of the Wisconsin Constitution. The decision to remove an officer [“governor” in SCR 10.05(3)] is judicially reviewable by a civil action in circuit court.”

III. The Removal Authority Requested by the State Bar is Undemocratic.

The amendments to SCR 10.04(4) and SCR 10.05(3) requested by the State Bar should also be rejected because they are undemocratic. They transfer the authority to determine the membership of the Board of Governors and State Bar officers from the lawyers of Wisconsin to the Board itself. SCR 10.05(3) and SCR 10.04(1) set forth the basic framework that members of the Board of Governors and officers are elected for specific terms by the membership of each district. The State Bar’s proposed SCR amendments are undemocratic in granting the Board of Governors carte blanche authority to remove a governor or officer that the membership has elected for a specific term, if the board feels for any reason that a governor or officer has acted contrary to the best interest of the State Bar. The rule amendments proposed by the State Bar contain no standards. The phrase “best interest of the State Bar” (contained in the bylaws adopted by the Bar on June 12, 2013, before it had the authority to do so) is so vague as to be meaningless – and the removal is not appealable.

If someone believes that a governor or officer has acted inappropriately or contrary to the best interest of the State Bar, the remedy is through the democratic process. A bar member can run against that governor or officer, and the membership can determine the matter through the democratic process. The membership should determine the matter by voting – not the Board of Governors. The Court should reject the challenged State Bar rule amendments as an undemocratic power grab – transferring the authority to choose State Bar officers and governors from the membership to the Board of Governors.

IV. The Authority Requested by the Board of Governors is Unnecessary and Dangerous.

The authority to remove governors or officers requested by the State Bar in this docket is both unnecessary and dangerous. First, the Bar argues that it needs the authority to remove governors or officers whose licenses have been revoked or suspended or who are guilty of “misconduct,” which is undefined. No examples of either “misconduct” or conduct “contrary to the best interest of the State Bar” (the language of the bylaws adopted by the Board of Governors on June 12, 2013) are provided to the Court. These undefined categories offered by the State Bar are merely stalking horses and post hoc rationalizations, as – to my knowledge -- no State Bar officer or governor has had his or her license revoked or suspended in the entire history of the Bar. Nor have officers or governors committed such acts as stealing State Bar money or physically assaulting officers or governors during heated arguments at board meetings. These are some theoretical examples posited in pre-June 12 meeting discussions to justify the removal authority requested in this docket. A final justification for this broad authority to remove officers and governors was stated by a governor at the June 12 meeting in response to the amendment then proposed to protect First Amendment rights: According

to this governor, a member of the Nazi party might be elected to the Board of Governors (or a governor might join the Nazi party after election), and the Board should not have to tolerate such a person as one of its members, regardless of the First Amendment. (I am not kidding. This argument was actually made. Apparently, Nazis are preparing to storm the Board of Governors, and the removal authority requested by the State Bar in this docket is necessary to repel them. Fantastic! Colonel Klink and Sergeant Schultz, beware! Armed with its new bylaws, the Board of Governors of the State Bar of Wisconsin is ready for you.) In short, the removal authority adopted by the State Bar via bylaws at the June 12 meeting and now requested of this Court after-the-fact is a solution in search of a problem. The harm purportedly sought to be prevented has never occurred and may merely be a pretext to allow the State Bar to squash divergence of thought and action.

As such, the authority to remove officers and governors sought by the State Bar in this docket presents a grave danger to the independence of officers and governors as well as a threat to the democratic principle that the membership – not the Board of Governors – is the body that selects officers and governors. At the meeting of June 12, 2013, the State Bar tipped its hand as to the real purpose of the removal authority it now seeks when it rejected an amendment to the bylaws adopted at that meeting which would have exempted exercise of the First Amendment freedoms of officers and directors from being a basis for their removal. Whether by purpose or by effect, the dangers inherent in the removal authority sought by the State Bar in this docket greatly outweigh the imaginary problems raised by the State Bar as reasons for giving it such vast and undefined authority. The authority to remove State Bar officers will create many more problems than it solves.

V. The Court Should be Wary of Granting Authority to the State Bar Via Bylaw Rather than Supreme Court Rule.

The Court will note that the rulemaking authority requested in this docket by the State Bar is unrestricted authority to adopt bylaws on the subject of removal of officers and governors: “Officers [governors] may be removed from office and vacancies filled in accordance with the bylaws.” The specific provisions to be adopted by the State Bar will be contained in bylaws, not Supreme Court rules. This strategy – intentionally adopted by the State Bar -- prevents the Court from having direct input into the language of any provisions adopted by the Board of Governors to remove an officer or governor, because the Court has indicated that it will only approve or reject a State Bar bylaw on review, not amend it. Thus, the State Bar’s petition for unlimited authority to remove an officer or governor through adoption of bylaws -- not through specific language contained in Supreme Court rules -- insulates this authority from Supreme Court input or amendment.

If the Court does grant the State Bar any authority to remove officers or governors, that specific authority should be contained in Supreme Court rules, not State Bar bylaws. If the Court by rule does grant the Bar the authority to remove officers and governors by provisions in the Bar bylaws, that authority should be narrowly and specifically written to list the bases for removal which may be contained in the bylaws. Unlimited authority is dangerous and should not be granted.

VI. The Court Should Not Reward the State Bar for Adopting the Bylaws Before It Received the Authority to Do So and Before the Membership Knew What the Bar was Doing.

Finally, in addition to the substantive arguments made above, the Court should consider the procedural aspects of this proceeding as reflecting poorly on the position and purpose of the State Bar: the procedure used by the Bar does not pass the sniff test. First, there is no controversy that the Bar adopted the bylaws allowing it to remove officers and governors before it filed its petition in this docket requesting the Court to grant it the authority to adopt those very bylaws. For an organization built on the foundation of the principle of the rule of law, this procedure is embarrassing. A first year law student writing the answer to a law school exam question would not tell a client that it has no legal authority to act, but go ahead and act anyway, and we will worry about getting that authority later. The State Bar has set a poor example for the public in this proceeding regarding the rule of law.

Second, the Court should be aware that the State Bar deviated from its usual procedure in adopting the removal bylaws [challenged in docket 13-13]. The Bar's usual procedure is to debate and discuss a proposal at one meeting, but not to vote on it until the next. The purpose of this procedure is to enhance deliberation and thoughtfulness about a proposal and to allow discussion between governors and their constituents before a vote is taken. In the situation of the bylaws challenged in docket 13-13, a motion was made at the June 12 meeting to move them from a "reporting" item to what is referred to as an "action" item, permitting an immediate vote by the Board of Governors. (Please see attached minutes, page 2, item 2.) The motion to make the bylaws an "action" item passed overwhelmingly. A reasonable person, acting reasonably, might conclude that the State Bar was in a great hurry to adopt these bylaws and did not wish any slow deliberation or input by the membership to derail this train. In adopting these bylaws at the same meeting they were introduced, the Board of Governors prevented the membership from knowing what the Board was considering until after the Board had acted. The Court should not reward the Board of Governors for intentionally preventing the membership from knowing what it was doing until after the vote was taken. Nor should the Court countenance or reward the Bar's procedure of adopting the bylaws at issue in docket 13-13 before it petitioned this Court for the authority to do so.¹

Conclusion

¹ In addition to adopting the bylaws at issue in docket 13-13 before petitioning the Court for the authority to do so, at the same meeting the Board of Governors knowingly violated State Bar Bylaw Article III, Section 11(c) by electing a delegate to the American Bar Association who was not a member of the ABA at the time of election, as required by that bylaw. (Please see *Wisconsin Lawyer*, September 2013, page 8.) June 12, 2013, was not a good day for the rule of law and the State Bar of Wisconsin.

The State Bar's petition for authority to adopt bylaws governing removal of officers and governors presents the Court with a number of alternatives:

1. Because the reasons given by the State Bar for its request for authority to remove officers and governors appear to have no basis in fact or reality -- and because the State Bar has indicated that it will not protect the First Amendment rights of officers or governors whom it may seek to remove -- the Court may wish to deny the Bar's petition in its entirety.
2. If the Court does wish to grant the State Bar limited authority to remove officers and governors whose licenses have been suspended or revoked, the Court may want to draw that authority very narrowly and place it in Supreme Court rules, as follow: State Bar proposed SCR 10.04(4) and the last sentence of State Bar proposed SCR 10.05(3) respectively can be amended to read: "**SCR 10.04 Officers.** (4) Officers whose licenses to practice law have been revoked or suspended may be removed from office and their vacancies filled in accordance with the bylaws," and [SCR 10.05(3)] "Governors whose licenses to practice law have been revoked or suspended may be removed from office and their vacancies filled in accordance with the bylaws."

Even this authority, however, is unnecessary, as current SCR 10.03 provides that inactive Bar members may not hold office or vote in State Bar elections. Thus, on suspension or revocation of law license, it would appear that a State Bar officer or governor automatically becomes ineligible to continue in office.

3. If the Court wishes to grant broad authority to the State Bar to remove officers and governors, the Court may wish to protect their First Amendment rights by adding the following sentence to the Bar's proposed amendments of SCR 10.04(4) and 10.05(3): "The State Bar may not remove an officer [SCR 10.04(4); the word "governor" replaces "officer" in SCR 10.05(3)] because of his or her speech, association, advocacy, or activity which is protected by the First Amendment to the United States Constitution or the Free Speech Clause of the Wisconsin Constitution. The decision to remove an officer ["governor" in SCR 10.05(3)] is judicially reviewable by a civil action in circuit court."

4. Finally, the Court may be so put off by the State Bar's procedure in this rulemaking petition that the Court may wish to deny the petition out-of-hand without consideration of its merits. The Bar's backward adoption of bylaws concerning the removal of officers and governors *before* it petitioned the Court for authority to adopt such bylaws does not exhibit a respect for the rule of law and legal process that should be exemplified by the association which represents all Wisconsin lawyers to the public. Similarly, a bare three paragraphs concerning "removal" in the Bar's supporting memo is threadbare compliance at best with paragraph IV of the Court's guidelines for rulemaking petitions, which requires "a thorough, detailed explanation of each amendment and reasons for the change." The State Bar's memo contains no factual basis and no developed arguments to support its petition for "removal" authority.

The authority to remove officers and governors sought by the State Bar in this docket is unnecessary, undemocratic, vague, unlimited, and a threat to First Amendment

rights. The authority requested by the State Bar presents a much greater danger than the illusory problems it seeks to solve. The Court should deny the State Bar's petition.

Respectfully submitted,

/s/ Steven Levine

A handwritten signature in black ink, appearing to read "S. Levine", written over the typed name "Steven Levine".

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December 5, 2013

DRAFT MINUTES

Board of Governors

June 12, 2013

Madison Marriott West, Madison, WI

Chairperson Kelli Thompson, Presiding

Chairperson Thompson called the meeting to order at 10:40 a.m.

1. Roll Call.

Present:

Kevin Klein	Patrick Fiedler
James Brennan	Jennifer Stuber
Kelly Nickel	Brian Anderson
Christine Barden	Andrew Beilfuss
Joseph Cardamone	Sherry Coley
Susan Collins	William Curran
Raymond Dall'Osto	John Danner
William Fale	Robert Gagan
Thomas Gehl	Robert Goepel
Anthony Gray	Kimberly Haines
Charles Hanson	Arthur Harrington
Margaret Hickey	Frederick Kaftan
Jill Kastner	Lisa Lawless
Steve Levine	Atheneé Lucas
Kevin Lyons	Susan Miller
Theodore Molinari	Thomas Phillips
Sarah Ponath	Deborah Price
Thomas Ragatz	Daniel Rinzel
Christopher Rogers	Anique Ruiz
Melanie Rutledge	Thomas Schwaba
Charles Stahmer	George Steil
Paul Swanson	James Thiel
Laura Skilton Verhoff	Nicholas Zales
Kelli Thompson	Robin Dalton
Adria Maddaleni	

Absent:

Todd Seelman	Richard Summerfield
Michael Waterman	Leland Wigg-Ninham
Stephan Grochowski	Latrice Milton

Also Present:

George Brown	Jan Marks
Robert Barrington	Bruce Brovold
Douglas Buck	Michael Cohen
Martin Gagne	David Jones

Brett Ludwig	Ann Molitor
John Orton	Nilesh Patel
Gregory Pitts	Ronald Sonderhouse
Lee Turonie	Donna Kinney
Sandy Lonergan	Carol Chapa
Katie Stenz	Lisa Roys
Joe Forward	Derek Novotny
Jan Wood	Larry Martin
Cale Battles	Ryan Stippich
Dean Dietrich	Lynda Tanner
John Voelker	Nicki Oster
Patricia Carrera	Joyce Hastings
Nate Cade	Keith Sellen
Randy Nash	Christine Bremer Muggli
Catherine Rottier	Thomas Shriner
Joseph Troy	Andrew Chevrez
Andrea Gage	Nicholas Vivian
John Walsh	

Chairperson Thompson welcomed the newly-elected Board members along with Atty. Nate Cade, Interim State Delegate to the ABA, Mr. John Voelker, Director of State Courts, Attys. Joe Troy, Catherine Rottier, Tom Shriner and Christine Bremer Muggli, members of the Judicial Task Force, Atty. Ryan Stippich, chair of the State Bar's Bench Bar Committee, and Atty. Dean Dietrich, President of the Wisconsin Law Foundation.

President Klein presented triads to several outgoing Board members.

2. Approval of Agenda. Governor Kaftan asked that the BOG Governance Committee's draft rules and bylaws for succession and removal of the President and Board members be moved from a reporting item to an action item.

Governor Barden asked that an item be added at the end of the agenda to go into closed session to give President Klein an opportunity to report to the Board on the Executive Director's evaluation.

A motion was made and seconded to approve the agenda as amended. The motion passed unanimously.

3. Approval of April 19-20, 2013 Minutes. Governor Hanson moved approval of the minutes. Governor Goepel seconded the motion. The motion passed unanimously.

4. President's Report. President Klein thanked everyone for their service on the Board and said he appreciated all the support and help he received from governors. He noted several big events coming up in the next year including the National Mock Trial Tournament and the 2014 Annual Meeting and Conference. He asked that governors

Court preliminarily adopted SCR 98.07 that would give the State Bar flexibility to publish "notice of" rather than full publication of final orders adopting, amending, or repealing a rule or statute. He said the Communications Committee was asking the Board to support the filing of a petition with the Supreme Court to amend SCR 10.12 along with corresponding changes to other Supreme Court Rules and State Bar Bylaws. He also pointed out a publication plan contained in the materials that outlined how the State Bar would provide various notices if the Supreme Court approved the petition to amend SCR 10.02. He noted that any amendments to the publication plan would be reviewed by the Executive Committee with final approval by the Board along with a notice to the members.

Governor Kaftan, chair of the BOG Governance Committee, noted that the committee had been involved in this process and had reviewed the work of the Communications Committee. He clarified that there were two things happening: 1) expanding the definition of an official publication; and 2) development of the publication plan that would keep the publication process in control of the Board. He said although the committee did not feel that all notices should be electronic at this time, it did think it was important to move forward and say that certain notices should be distributed electronically rather than in print as outlined in the publication plan. He stated that the BOG Governance Committee had a unanimous vote of support for this and encouraged the Board to adopt it.

Governor Kaftan moved that the Board accept the proposal of the Communications Committee to amend the State Bar bylaws and Supreme Court rules as set forth in the materials. Governor Gray seconded the motion. The motion passed by a 39 to 0 show of hands which met the requirement of a 2/3 vote of the entire Board.

2:34 p.m.

20. Draft Rules and Bylaws for Succession and Removal of the President and Board Members. (Attachment H) Governor Kaftan stated that this was another project that the BOG Governance Committee had been working on for some time and had been driven largely by the efforts of Governor Dall'Osto.

Governor Dall'Osto, a member of the BOG Governance Committee, reported that the committee had been reviewing the matter of succession should there be a vacancy in the office of president, the definition of vacancy, and the terms under which an officer or member of the Board could be removed. He updated the Board on the committee's work to date and outlined the committee's recommendations for amendments to the draft rules and bylaws. He felt a provision was needed for the Board to govern itself and this would provide the necessary tool to do so.

Governor Hanson moved to approve the draft rules and bylaws for succession and removal of the President and Board members. Governor Fale seconded the motion.

Governor Levine moved to amend the main motion to add the following sentence to the proposed bylaws: "Conduct outside office which is contrary to the best interest of the State Bar does not include speech, association, activity, or advocacy which is protected

by the First Amendment to the U.S. Constitution or the Free Speech Clause of the Wisconsin Constitution.”

There was concern and discussion that the language related to conduct that was a basis for removal was so broad that it could potentially include conduct or advocacy protected by the First Amendment or the Wisconsin Constitution.

The amendment to the main motion failed by a 3 to 34 show of hands.

The main motion passed by a 38 to 2 show of hands which met the requirement of a 2/3 vote of the entire Board.

- 2:55 p.m. 21. Preliminary Business Plan. (Attachment I) Executive Director Brown noted that since the April Board meeting a small revision had been made on page 6 to include the sentence, “Currently, most purchased products or services are bought by members of the State Bar.” He stated that this revision was based on a recommendation from Governor Curran.

Governor Lyons moved adoption of the preliminary business plan. Governor Curran seconded the motion. The motion passed unanimously.

- 2:57 p.m. 22. Election of Members of the FY 14 Executive Committee. (con’t) Governor Collins reported that two candidates were tied for the sixth spot on the Executive Committee and there would be a revote to break the tie.

- 2:59 p.m. 23. Patient Compensation Fund Report. Past President John Walsh, the State Bar’s representative on the Patient Compensation Fund Board, provided a brief report on the Fund.

- 3:05 p.m. 24. Wisconsin Law Foundation. Atty. Dean Dietrich, President of the Wisconsin Law Foundation, provided the Board with an annual update on the Foundation and his remarks included the work and progress the Foundation had made in moving forward its mission.

- 3:14 p.m. 25. Election of Members of the FY 14 Executive Committee and Election of State Bar of Wisconsin Delegates to the ABA House of Delegates. (con’t) Governor Collins announced that the following six governors had been elected to serve on the FY 14 Executive Committee: Jill Kastner, Kevin Lyons, Sarah Ponath, Chris Rogers, Paul Swanson, and Laura Skilton Verhoff.

Governor Collins announced that the State Bar’s young lawyer delegate to the ABA would be Governor TJ Molinari.

- 3:15 p.m. 26. Finance Committee Report. (Attachment J) Ms. Lynda Tanner, Assistant Executive Director and Director of Administrative and Finance, said she had been reporting to the Board on different aspects of the balance sheet over the last five months and she said that she would be reporting on unrestricted fund balances at this meeting. She noted that