SUPREME COURT OF WISCONSIN

NOTICE
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No. 19-10

In the Matter of Amending Supreme Court Rules Pertaining to Permanent Revocation of a License to Practice Law in Attorney Disciplinary Proceedings (Permanent Revocation)

FILED

DEC 18, 2019

Sheila T. Reiff
Clerk of Supreme Court
Madison, WI

On March 13, 2019, the Office of Lawyer Regulation (OLR) Procedure Review Committee ("Committee"), by its Chair, the Honorable Gerald P. Ptacek, and by Attorney Jacquelynn B. Rothstein, Chair of the Subcommittee on Reinstatement, filed a rule petition asking the court to amend Supreme Court Rule (SCR) 21.16(1m)(a) and SCR 22.29(2) to permit the court to order permanent revocation of an attorney's license to practice law.

The court discussed the petition at a closed administrative rules conference on June 6, 2019, and voted to seek written comments and conduct a public hearing. A letter soliciting comment was sent to interested persons on August 22, 2019.

The court received a written response in regard to the proposed rule changes from Attorney Dean R. Dietrich, on behalf of the State Bar of Wisconsin Board of Governors, opposing the petition.

The court conducted a public hearing on October 29, 2019. The Honorable Gerald P. Ptacek, Chair of the Committee, and Attorney Jacquelynn B. Rothstein, Chair of the Subcommittee on Reinstatement, presented the petition to the court. Attorney Dean R. Dietrich spoke against the petition on behalf of the State Bar of Wisconsin. Keith Sellen, Director, Office of Lawyer Regulation, responded to questions from the court but stated that the OLR took no position on this petition.

After the public hearing, the court received a letter from Attorney Donald J. Christl in support of the petition, and a letter from Attorney Stephen E. Kravit opposing the petition.

At a closed administrative rules conference, the court voted to add a comment to SCR 21.16 (Discipline) to clarify that revocation under SCR 21.16 is not permanent in Wisconsin. The court then voted to deny the petition.

IT IS ORDERED that effective July 1, 2020 a Comment to Supreme Court Rule 21.16 is created to read: A lawyer whose license to practice law in Wisconsin is revoked under SCR 21.16 may seek reinstatement under SCR 22.29, five years after the effective date of the revocation. See SCR 22.29(2).

IT IS FURTHER ORDERED that the Comment to Supreme Court Rule 21.16 is not adopted, but will be published and may be consulted for guidance in interpreting and applying the rule.

IT IS FURTHER ORDERED that petition to amend Supreme Court Rule 21.16(1m)(a) and Supreme Court Rule 22.29(2) to permit the court to order permanent revocation of an attorney's license to practice law is denied.

Dated at Madison, Wisconsin, this 18th day of December, 2019.

BY THE COURT:

Sheila T. Reiff
Clerk of Supreme Court

¶1 ANNETTE KINGSLAND ZIEGLER, J. *(dissenting).* I respectfully dissent. I believe there may be rare and unusual cases that would warrant the revocation of an attorney's license to practice law. This court has been called upon to allow true revocation in the past, but has declined to do so. We have said that we will consider other options, but have not done so. We continue to use the term "revocation," but in reality we just suspend lawyers, call it revocation, and allow these most heinous offenders to petition for readmittance after a period of five years. This creates false perceptions both to the public and to the lawyer seeking to practice law again. I have now come to the conclusion that we should adopt a rule that would allow our lawyer disciplinary rules to be amended to afford this court the option of permanently revoking an attorney's license to practice law in Wisconsin. While this petition has gained significant momentum in support, I acknowledge that revocation should be rare, and the court must be most hesitant to consider the option.

¶2 While some may conclude that our current system of "revocation" (for five years) is sufficient, I conclude it may not always be. A court with this authority would need to be particularly mindful of outside influences and political winds that may be afoot and be sure to not impose such a severe sanction unless no lesser sanction could be imposed. As it stands, however, while we state that a lawyer has been revoked, we then allow that lawyer to petition for reinstatement. That is not revocation; it is a lengthy suspension. I conclude that in rare cases it is more appropriate to honestly advise the attorney that his or her conduct

warrants permanent revocation of the privilege to practice law in Wisconsin. This safeguard would also instill the public with trust and confidence in the lawyer regulatory system. For those who most heinously offend the nobility of the practice of law and for which no other remedy could be reasonably applied, I would endorse the option of permanent revocation.

¶3 The remedy of revocation should be most infrequently imposed for only the lawyer whose misconduct is so egregious that nothing less suffices to protect the public and preserve the integrity of the legal profession. It seems misleading to impose what amounts to a five-year suspension——which is what our current "revocation" rule really imposes——and call it an SCR 21.16(1m)(a) revocation. I suspect that when most citizens hear that a lawyer has been "revoked" for professional misconduct, they have the impression that revocation is permanent. While the court may conclude that continually denying admission may be a satisfactory safeguard, it would be more forthright to instead revoke that attorney from the practice of law and let the public know that to actually be the case.

¶4 I recognize that some 32 jurisdictions have rules of revocation like Wisconsin's.[1] See SCR 22.29(2). However, the option of a permanent or more lengthy revocation is available in

[1] Alaska, Connecticut, Delaware, District of Columbia, Georgia, Hawaii, Idaho, Iowa, Kansas, Maine, Michigan, Minnesota, Missouri, Montana, Nebraska, North Carolina, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, U.S. Virgin Islands, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.

many other jurisdictions. Some allow permanent revocation[2] and others permit some variation of it, such as for successive revocations or in the event the lawyer is convicted of a felony.[3] Others permit a longer period of suspension.[4] I favor joining these jurisdictions to give this court another option to consider when faced with particularly severe lawyer misconduct. Since our last denial of the request to allow true revocation, we have adopted no such variation. At some point we should move forward.

¶5 To be clear, I anticipate the court would only rarely impose such a harsh penalty, but we should be empowered with the option should we need it. I am persuaded as well by the fact that this is the second time——after having received input from a variety of individual stakeholders, including those who most closely work with these rules——that this court has been asked to adopt a rule permitting permanent revocation.

¶6 By way of historical perspective, in 2010 the Board of Administrative Oversight and the Preliminary Review Committee filed a joint petition asking the court to establish standards and procedures to permit permanent revocation of lawyer licenses in

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[2] See, e.g., Arkansas, Florida, Indiana, Kentucky, Louisiana, Nevada, New Jersey, New Mexico, Ohio, and Oregon.

[3] In Arizona a lawyer convicted of a serious crime is presumed to be disqualified for reinstatement, but this is rebuttable by clear and convincing evidence. Alabama, California, and Tennessee do not generally allow permanent disbarment, except that a second disbarment is permanent. Disbarment may be permanent for a felony conviction in Guam and Mississippi. In Maine and New Hampshire, the court may impose permanent disbarment at its discretion.

[4] Colorado (8 years), Massachusetts (8 years), and New York (7 years).

cases where the seriousness of the lawyer's misconduct and significance of the public interest required it. We denied that petition. See S. Ct. Order 10-04, 2011 WI 11 (issued Feb. 22, 2011) ("Petition to Amend Supreme Court Rules 21.16, 22.19, and 22.29, establishing standards and procedures for permanent revocation."). In voting to deny the petition, the court indicated it might be amenable to modifying the rules governing reinstatement, for example, extending the length of time before an attorney whose license has been revoked can seek reinstatement of his or her law license, increasing the standards for reinstatement, or requiring the court to consider the nature of the attorney's misconduct when evaluating a reinstatement petition. However, we have done none of these things.

¶7 In 2016 this court created the OLR Process Review Committee ("the Committee") and directed it to report to the court with recommendations that would increase the efficiency, effectiveness, and fairness of the OLR process. The Committee, after undertaking an extensive review of our disciplinary rules and procedures and considering various options, filed this rule petition and again recommends the court adopt a permanent revocation rule. This time, I am persuaded.

¶8 Permanent revocation should not be an attempt at retributive justice but a necessary sanction for heinous violations of the public trust, a trust one swears to uphold when becoming a lawyer.

¶9 The practice of law is a privilege, not a right. Lathrop v. Donohue, 10 Wis. 2d 230, 237, 102 N.W.2d 404 (1960). That

privilege is predicated not only on legal knowledge, but also on character and fitness; a lawyer is an officer of the court and takes an oath to uphold certain principles. SCR 40.15. Indeed, the primary justification for the moral character requirement embodied in our bar admission and reinstatement rules is to protect the public, the courts, and the legal profession. By granting a license to practice law this court is confirming that the person can be recommended to the profession, the courts, and the public as a person fit to be consulted by others and to represent them and otherwise act in matters of trust and confidence.

¶10 When a lawyer violates our ethics rules and the Attorney's Oath by engaging in repeated and numerous instances of neglect, dishonesty, and fraud, and when a lawyer causes serious and perhaps financially devastating damage to clients in breach of the lawyer's fiduciary duty, that individual may forfeit the privilege of practicing law in this state. When a lawyer commits a horrific crime, that individual may forfeit the privilege of practicing law in this state. For me, the purpose of a permanent revocation is far more about protection of the public, including the public's trust and confidence in the legal system, than it is about punishing the lawyer.

¶11 Those who oppose the rule respond that it is within the court's discretion to refuse reinstatement to a lawyer who has engaged in egregious misconduct. This approach is no less arguably "punitive"——the outcome to the lawyer is the same——but it is also a waste of judicial time and of resources. Seeking reinstatement is an expensive undertaking for the petitioning, revoked lawyer

who likely has other restitution and cost obligations to satisfy. A reinstatement petition requires significant resources of the Office of Lawyer Regulation as well as this court. If there is no chance a particular lawyer will be readmitted because of the nature of the lawyer's underlying misconduct, we should say so.

¶12 Declining to reinstate a person's law license does not deprive that person of the opportunity for personal growth and rehabilitation or for professional success in another sphere, for that matter. The option of permanent revocation as one of a number of permissible sanctions for lawyer misconduct would enhance the public's confidence in the disciplinary system.

¶13 Accordingly, I respectfully dissent.

¶14 I am authorized to state that Justices REBECCA GRASSL BRADLEY and BRIAN HAGEDORN join this dissent.