

Memorandum

SUPREME COURT OF WISCONSIN
OFFICE OF LAWYER REGULATION
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DATE: August 15, 2013
TO: Clerk of the Supreme Court and Court of Appeals
ATTN: Carrie Janto
FROM: Director, Office of Lawyer Regulation
SUBJECT: Rule Petition 13-03: Response to Request for Information

On July 16, 2013, Commissioner Julie Rich requested information regarding Rule Petition 13-03, Petition to amend SCR 10.03(3) and (7) relating to inactive members requesting active status and admission after resignation from State Bar. The Chairperson of the Board of Administrative Oversight joins in this response.

Most of the information requested relates to other offices and agencies; therefore, OLR defers to them. OLR wishes to provide information regarding the following three requests.

What does “actively practiced law” mean in proposed SCR 10.03(3)(b)? Are there limits on the type of legal practice that is deemed the active practice of law? Does this mean more than having a law license?

The phrase “actively practiced law” is taken from the current rule. In the context of disciplinary cases, the phrase appears to mean the lawyer actually practiced law. See Reinstatement of Kells, 172 Wis. 2d 613 (1993); Disciplinary Proceedings Against Hur, 202 Wis. 2d 278 (1996); Disciplinary Proceedings Against Ratzel, 218 Wis. 2d 423 (1998).

In the context of SCR 10.03(3)(b) the term should mean that the license was in active status, the lawyer was in good standing, and the lawyer was substantially engaged in the practice of law similar to the requirement in SCR 40.05(1)(b) regarding proof of practice.

What standards will the OLR use to evaluate a petitioner’s eligibility for readmission or reinstatement?

Supreme Court Rules provide for an appropriate standard. SCR 22.28 License reinstatement, subparagraph (1) provides that attorneys suspended for more than 3 years for failure to pay bar dues or failure to comply with continuing legal education requirements may seek reinstatement under SCR 10.03(6m)(b) and SCR 31.11(1m), respectively. Within 90 days of service of a petition under these rules, OLR investigates the eligibility of the petitioner for reinstatement [SCR 10.03(6m)(b); and SCR 31.11(1m)(c)].

In Reinstatement of Polk, 2007 WI 51, 300 Wis. 2d 280, 732 N.W.2d 419 (2007), the Court expressed the standard as follows:

This investigation of eligibility for reinstatement after three or more consecutive years of administrative suspension is akin to the review conducted by the BBE during an initial

application for a license to practice law in this state. See SCR 40.06(1) and (3). To be admitted to practice in the first instance, an applicant must demonstrate that he/she has good moral character and the fitness to practice law. Such a showing, along with proof of legal competence, makes an applicant eligible to be admitted to the practice of law. Likewise, an attorney who has been administratively suspended and out of the practice of law in this state for three or more consecutive years must also demonstrate the attorney's "eligibility"—namely, that the attorney has good moral character and the fitness to practice law in this state.

Rules of the Board of Bar Examiners provide standards for determining character and fitness. Rule BA 6.01 provides the standard: “A lawyer should be one whose record of conduct justifies the trust of clients, adversaries, courts and others with respect to the professional duties owed to them. A record manifesting a deficiency in the honesty, diligence or reliability of an applicant may constitute a basis for denial of admission.”

Rule BA 6.02 identifies relevant conditions or conduct:

- (a) unlawful conduct
- (b) academic misconduct
- (c) false statements by the applicant, including concealment or nondisclosure
- (d) acts involving dishonesty or misrepresentation
- (e) abuse of legal process
- (f) neglect of financial responsibilities
- (g) neglect of professional obligations
- (h) violation of an order of a court
- (i) evidence of mental or emotional impairments substantial enough to affect the applicant's ability to practice law
- (j) evidence of drug or alcohol dependency
- (k) denial of admission to the bar in another jurisdiction on character and fitness grounds
- (l) disciplinary action by a lawyer disciplinary agency or other professional disciplinary agency of any jurisdiction

OLR would apply these standards.

Whether the amendments will have retroactive application?

Petitioners asked the Court to make the amendments effective on January 1 or July 1 following the Court's order. OLR would apply the procedures in the amendments to requests and petitions received on or after the effective date.