

SUPREME COURT OF WISCONSIN

NOTICE

This order is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 10-04

In the matter of the petition to amend Supreme Court Rules 21.16, 22.19, and 22.29, establishing standards and procedures for permanent revocation.

FILED**FEB 22, 2011**

A. John Voelker
Acting Clerk of
Supreme Court
Madison, WI

On March 16, 2010, the Board of Administrative Oversight and the Preliminary Review Committee filed a joint petition seeking to amend Supreme Court Rules (SCRs) 21.16, 22.19, and 22.29. The petition asked the court to establish standards and procedures to permit permanent revocation of lawyer licenses in cases where the seriousness of the lawyer's misconduct and significance of the public interest required it. On September 14, 2010, the court sent a letter to the petitioners seeking additional information regarding the petition. The petitioners responded by letters dated September 27, 2010, and September 29, 2010, respectively. The court also received a letter from Attorney Donald J. Christl, a member of the Preliminary Review Committee, writing in his personal capacity in support of the petition. A public hearing on this matter was conducted on

November 9, 2010.¹ Attorney Rod W. Rogahn, Vice Chair of the Board of Administrative Oversight, Attorney Edward A. Hannan, Chair of the Preliminary Review Committee, and Attorney Mark A. Peterson, Board of Administrative Oversight, presented the petition to the court. Attorney Frank Remington spoke on behalf of the State Bar of Wisconsin Board of Governors in opposition to the petition.

At the ensuing open administrative conference the court commended the petitioners for their work and for bringing the petition before the court. The court discussed practices in various other jurisdictions, noting that some provide for permanent revocation either by court rule or case law, while others do not. The court discussed the criteria proposed by the petitioners to assess when permanent revocation might be warranted, expressing concern that the rule might strip the court of the ability to rectify an unjust outcome.

The court reasoned that to justify permanent revocation on the assumption that the attorney will forever be a danger to clients requires making a judgment that an individual lacks the capacity to ever mature, reform, or to re-establish the requisite character and fitness required to practice law. A lawyer's misconduct may pose a danger to the public interest and this may require a lengthy suspension of that lawyer's license. However, to make the judgment that a lawyer is so unethical that reform is never possible—that the

¹ The public hearing in this matter was originally scheduled and duly noticed for October 19, 2010. On October 19, 2010, the State Capitol building was evacuated because of security concerns. The public hearing and open administrative conference were rescheduled and conducted on November 9, 2010.

lawyer can never again ethically serve clients in Wisconsin—is the kind of judgment that cannot be accurately determined at the time the lawyer is disciplined by this court. In some cases time will demonstrate that a particular lawyer is not capable of rehabilitation and remains a danger to the public interest. That lawyer will not be reinstated and will not be permitted to practice law. Indeed, no lawyer whose license has been revoked has a right to reinstatement. However, permanent revocation denies a lawyer any opportunity to even seek reinstatement. Permanent revocation denies any opportunity to demonstrate rehabilitation, growth, or maturity on the part of the lawyer.

Permanent revocation also forecloses any opportunity for the court to rectify an outcome that is later determined to be unjust, such as if a lawyer was permanently revoked for committing a serious felony but was later exonerated of the crime. The inflexibility of permanent revocation further illustrates the challenges inherent in determining, at the outset, the ability of a lawyer to re-establish the character and fitness requirements needed to practice law. In denying the petition for standards and procedures to permit permanent revocation, the court permits offending lawyers not only the chance, but also the incentive to demonstrate their ability to reform.

In considering the petition the court discussed statistics provided to the court regarding the number of long-term suspensions

or revocations ordered by this court.² The court emphasized that lawyers whose licenses have been suspended or revoked for professional misconduct can seek reinstatement but have no right to reinstatement. See, e.g., In re Disciplinary Proceedings Against Banks, 2010 WI 105, 329 Wis. 2d 39, 787 N.W.2d 809 (denying lawyer's petition for reinstatement noting that practicing law is a privilege not a right).

In voting to deny the petition, the court indicated it might be amenable to modifying the rules governing reinstatement, e.g., SCR 22.29 and SCR 22.31, 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.

Ultimately, however, a majority of the court was not persuaded there is a compelling need for the rule change because there is no right to reinstatement. Therefore,

IT IS ORDERED that the petition is denied.

IT IS FURTHER ORDERED that notice of the entry of this order shall be given by a single publication of a copy of this order in the official state newspaper and in an official publication of the State Bar of Wisconsin.

² The data recited at the public hearing indicate that of some 227 long-term suspensions or revocations ordered by the court, some 32 attorneys filed petitions seeking reinstatement of their law licenses. The court granted 17 of those reinstatement petitions. Two of those reinstated attorneys subsequently committed additional ethical violations.

Dated at Madison, Wisconsin, this 22nd day of February, 2011.

BY THE COURT:

A. John Voelker
Acting Clerk of Supreme Court

