

In the Matter of
Modification of the Process by which
Members Qualify for Transfer from
Inactive to Active Membership Status

MEMORANDUM
21-____

The State Bar of Wisconsin (the “State Bar”) petitions the Wisconsin Supreme Court (the “Court”) to amend Supreme Court Rule 31.06 relating to continuing legal education (CLE) requirements for the transfer from inactive to active membership status. The petition would establish the CLE requirements in Court Rule and provide for a “comity” rule that recognizes compliance with mandatory CLE for attorneys whose practice is principally in another state as sufficient for “make up” CLE requirements in Wisconsin. This petition was approved by the Board of Governors by a vote greater than 60 percent on December 4, 2020.

The Board of Bar Examiners is given broad authority to determine what if any CLE must be taken in order to transfer from inactive status to active status. SCR 31.06 provides that the board determines the attendance and reporting requirements. This petition seeks to remove this broad authority. Rather it seeks to place that determination with the Court, as with other CLE requirements, and to make the transfer to active status consistent with other provisions for CLE compliance established by this Court.

Under CLE 3.015, inactive lawyers seeking to reinstate to active status who have not complied with their most recent reporting period are required to take 30 credits of Wisconsin-compliant CLEs. Those who have not complied with the last two reporting periods are required to take 60 credits. Attorneys who are admitted to practice in another jurisdiction where there are mandatory CLE requirements can satisfy the requirement if they comply with 3.015(3):

(3) Except as found in SCR 31.05 (5) (d) and CLE 7.005, lawyers may satisfy the requirements of the above subsections if they demonstrate to the board that, during the entire time they were in inactive status, (i) they were admitted to the practice of law in another jurisdiction that had mandatory continuing legal education requirements, and (ii) they were current in meeting those requirements. (Emphasis added.)

SCR 31.05(5)(d) reads:

(d) For reinstatement, readmission, or reactivation, no more than 50 percent of a lawyer’s CLE may come from repeated on demand programs.

CLE 7.005, under Standards for Approval of Continuing Legal Education Activities provides:

CLE 7.005 Except for repeated on-demand programs as defined in SCR 31.01(6m), self-study courses as defined in CLE 1.02, and courses explicitly disapproved in Wisconsin, courses approved for CLE credit by, and attended in, any other state or territory or the

District of Columbia are deemed approved for the same number of hours and for the same purposes in Wisconsin. To take advantage of this section, lawyers must document the out-of-state approval in connection with filing their CLE Form 1.

Non-resident inactive attorneys are therefore required to submit or take Wisconsin compliant continuing legal education credits in order for them to be accepted for transfer to active status.

There is no provision for inactive members of the State Bar of Wisconsin residing in non-mandatory CLE states to transfer without taking additional Wisconsin-compliant courses. The State Bar is not requesting that standard be changed.

COMITY

In 2007 the Board of Bar examiners petitioned the Wisconsin Supreme Court to provide for comity of CLE compliance for those active members whose practice is primarily in another state. The original petition provided that “mandatory CLE requirement [be] substantially similar in content (including legal ethics and professional responsibility requirements), mode of presentation, and duration to Wisconsin’s and who is current in meeting that jurisdiction’s requirements [.]” After seeking additional comment, this Court adopted a “pure comity” rule rather than a “conditional comity” rule in SCR 31.04(3)

“A lawyer whose practice is principally in another jurisdiction that has mandatory continuing legal education requirements and who is current in meeting those requirements is exempt from the attendance requirement of SCR 31.02, but shall comply with the reporting requirement of SCR 31.03.”

The proposed amendments would clarify that the comity provisions embodied in SCR 31.04(3) apply to attorneys who are in compliance with its requirements and who seek to reinstate to active status in Wisconsin. We note that nothing in SCR 31.04 (3) directly addresses or denies comity treatment in inactive-to-active reinstatement requests. Nonetheless, it is the Board of Bar Examiners practice to deny comity recognition to reinstatement requests.

Further, there are many reasons that may underlie an active status attorney’s decision to go to inactive status—childbirth/child care/family care breaks in practice, the economics of maintaining two active licenses in different states during times of economic downturn or breaks in employment, unfamiliarity with the burdens of reinstatement to active status—to name just a few. Similarly, there are numerous reasons that an inactive attorney may wish to return to active status—resolution of the issues driving the decision to go inactive for a period of time, a desire to become more active in State Bar activities,/Nonresident Lawyer Division activities/Bar and Division service and leadership opportunities, a return to residence and practice in Wisconsin—again, to name just a few.

PROPOSED DRAFT

The proposed draft repeals the Board of Bar Examiners' authority to set CLE requirements for the transfer between inactive and active membership status. Rather it provides that inactive attorneys in mandatory CLE states may use compliance with their home state's CLE to meet the requirements for transfer to active status. It removes the requirement that the attorney be admitted to practice in their home state the entire time they are inactive in Wisconsin. Rather, they need only meet requirements that are similar for a non-Wisconsin licensed attorney to petition for full membership in Wisconsin, practicing three out of the past five years, found under SCR 40.05. These proposed changes clarify and are consistent with existing Supreme Court Rules governing CLE requirements, comity recognition, and admission to the Wisconsin Bar based upon practice experience in another jurisdiction.

Should this Court adopt this petition, the Board of Bar Examiners should also be directed to repeal any rules inconsistent with this Court's order.

Respectfully submitted this 8th day of June, 2021



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