

Dear Dane County Lawyers:

When I was elected to the Board of Governors two years ago, I resolved to regularly communicate to lawyers in this district about what was happening at the Bar. I have long felt that one of the problems with the State Bar was that elected Governors could do a better job keeping members informed. My letter is not intended to represent the position of the Bar or even to substitute for the information that the Bar publishes on its website. You can read about recent developments at: <http://www.wisbar.org>. This writing offers only my own insights, for whatever worth they may have. This is my fifth letter to Dane County lawyers, as I report on the Board of Governor's meeting held in Madison on February 26, 2010.

Despite my efforts over the last two years, I have been unable to use the Bar Association to communicate with my constituents. Here, and in the past, I have been forced to send these letters to government lawyers using an e-mail list maintained by the State Attorney's Union and by putting them online on the Dane County Bar's website. I proposed a policy to change this and I thought I had succeeded. The Bar now has a policy that allows Governors to send email messages directly to their constituents. But despite the fact it appears nowhere in the text of the policy, the Bar says it will not send out my letters unless every other District IX Governor gives me his or her "okay". In other districts where there is only one Governor there is no problem. I told the Bar that was like requiring Tammy Baldwin to get Paul Ryan's approval before she sent out her letters to her constituents.

So, for now, I am back to using indirect methods to spread my message. I apologize if you feel this letter is yet another annoying message from an organization you did not voluntarily choose to belong to. If that is how you feel, hit the "delete" button now. If, on the other hand, you are marginally interested in what happened at the last Board of Governor's meeting, please read on.

1. The Future of the Integrated Bar

The biggest issue at the most recent meeting of the State Bar Board of Governors was the discussion as to whether the Bar should ask the Supreme Court to decide whether it should become a "voluntary" association. On the agenda as a "discussion item", was a proposal by the Long Range Planning Committee to create two committees and charge each committee with the task of preparing a Petition to the Court; one would advocate for a voluntary Bar and the other would make the case for keeping it mandatory. The Board will vote on this proposal at its next meeting.

I learned a little bit of trivia. I did not know that the Wisconsin State Bar was created in 1878. In 1943, the State Legislature passed a law making membership in the Bar mandatory. The Wisconsin Supreme Court then took the position that this law was "advisory", because the Court, not the Legislature, had authority over the practice of law.

In 1956, the Court made membership in the Bar mandatory. Since then (1961, 1979, 1991, and 1996) the Court has reaffirmed the current structure of the State Bar. For the brief period during which membership was voluntary 87% of all lawyers still joined the Association. According to the most recent survey, however, 57% of Wisconsin lawyers desire a voluntary organization.

I think the time is right to ask the Court to reject or reaffirm the structure of the Wisconsin State Bar. The issue is of central importance to many members. A lot of time is consumed arguing for or against the “mandatory” Bar, and other important work is placed on a back burner. Keep in mind that the only entity that can change the mandatory Bar is the Wisconsin Supreme Court. The Court created the Bar. It can decide if it wants to change it. Perhaps the Court can decide if it even wants to consider the matter.

If there is anyone who wants to work on the actual petitions as part of a formal committee, please let me know. (Please don’t send me individual messages about your personal opinion on the issue, as I already have a steady stream of discontent with the mandatory bar directed at me from my colleagues and friends.) We all know the issue is divisive and controversial. As those schooled in parliamentary procedure would say, it is time to “call the question”.

2. Opposition to the Office of Lawyer Regulation’s Change in Supreme Court Rules

The Office of Lawyer Regulation wants the State Bar to support its Petition to amend SCR 22:19 to allow the Court to permanently revoke an attorney’s law license. Currently, if a lawyer is suspended for more than six months or revoked, he or she can get his or her license back only after he or she petitions the Court for reinstatement. Revoked lawyers can file that petition after five years. The Bar declined to support the change, and instead voted to oppose it.

I made the motion to oppose the change. I came to the conclusion that the proposal was a solution in search of a problem. In the last 30 years, 227 lawyers were revoked and 32 applied for reinstatement (one lawyer petitioned five times). In the last 30 years, the Court granted 17 petitions for reinstatement and only two lawyers reoffended.

Wisconsin’s current rule is modeled after the ABA rule. It is not that I have sympathy for the errant unethical attorney, but the statistics do not bear out proof that there exists a problem. Last year there was exactly one, only one, petition for reinstatement filed. The proposed rule was patterned after a Louisiana rule. I mean no disrespect to the Pelican State, but I am unaware of really any part of our legal tradition being modeled after Louisiana.

An ironic twist to this proposal came in a later item on the agenda. In the report on Bills pending in the Legislature, it was reported that the Individual Rights and Responsibilities Section actively supported AB 353, which would allow felons who are on probation, parole or extended supervision to vote. The argument was that allowing

felons to vote created “an additional incentive for them to not reoffend, thereby aiding in their rehabilitation”. It occurred to me that by allowing a lawyer whose license had been revoked or suspended the ability to petition the Court for reinstatement, we would provide that lawyer with the incentive to change his or her life, deal with their problem and generally do something to aid in his or her rehabilitation. It occurred to me that revoked or suspended lawyers should not be treated worse than convicted felons.

But beyond all of that, I felt the amendment to SCR 22:19 is counterproductive. I could live with the fact that it rejects the notion of rehabilitation; but the real problem is that under the current SCR 22:19, a lawyer holding out hope for reinstatement is required to serve a kind of probation and among other things make restitution to any victims of his or her transgression. I see no motivation to make things right for the lawyer who is told never to come back.

3. Keller Dues Reduction

The Board approved the calculation of the amount attorneys can deduct from their next dues statement at \$10.25. This amount includes all the costs for things that members should not have to pay for, because membership is mandatory.

4. Support for Assistant District Attorneys

The Board previously went on record supporting adequate “staffing” in the District Attorney’s offices. Because of recent budgetary developments, and the issuance of layoff notices, the Board approved a recommendation from the Government Lawyer’s Division to also include support for adequate “funding”. Obviously, having adequate staffing that is underfunded, which results in layoffs is no real solution. The Board has taken similar positions with respect to Public Defenders, payments to PD appointments, and on various other issues involving attorneys publicly employed.

5. The Budget and the Convention

The State Bar budget is in a deficit (surprise!), but we are told it is expected to balance by the end of the year. The annual convention will be moved to Wisconsin Dells and is scheduled for June 8-11, 2011. Not surprisingly, some people grumbled moving away from the Madison/Milwaukee locations, but when I heard it will save the Bar a lot of money, it made sense.

6. Elections

I missed the end of the fall meeting. I learned later that I was appointed to the “nominating committee.” The lessons learned are don’t miss any meeting and don’t leave any meeting early. You can see the names of the nominees for President-elect, Secretary and Judicial Council on the Bar website, and you may have already received by mail biographies for those running for President-elect. Responding to criticism by some that the Bar is a “closed” group, and mindful of past elections where the successful

candidate was “self-nominated”, the committee chose to nominate anyone who expressed an interest in the position. That is why you will see more than two candidates for President-elect and Judicial Counsel. The candidates for Secretary are all non-resident lawyers. Late last year the Board changed the bylaws to allow non-resident members to run for offices, except for the office of President-elect.

You can imagine the response we got from the group when it was announced there were more than two candidates for most offices. Some Governors called for an immediate rule change. Others lamented the prospect that the winner would not get more than fifty-percent of the vote. The plurality voting system is used in about one-third of the world’s countries. Maybe Americans just don’t have enough experience with it to be comfortable. But vestiges of the plurality voting system remain in the United States. A lot of local elections are done this way. Closer to home, the State Bar uses the plurality voting system to elect District Governors in Dane and Milwaukee Counties, and perhaps in other districts. For me, I do not feel any less empowered as a member of the Board of Governors because I did not get over 50% of the vote. (Though I was a little hurt when I found out my “friends” threw out their ballots rather than pay for postage).

That is about all that happened at our last meeting. I am nearing the end of my two-year term and I will say that I have enjoyed my stint on the Board of Governors. Please feel free to contact me if you have any questions.

Regards,

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