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APPENDIX A

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

No. 20-2387

SCHUYLER FILE,

Plaintiff-Appellant,

v.

LARRY MARTIN, Executive Director
of the State Bar of Wisconsin, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the
Eastern District of Wisconsin
No. 19-C-1063 – Lynn Adelman, *Judge.*

Argued January 15, 2021 – Decided April 29, 2022

Before SKYES, *Chief Judge*, and WOOD and HAM-
ILTON, *Circuit Judges.*

SKYES, *Chief Judge.* Under rules adopted and enforced by the Wisconsin Supreme Court, all lawyers licensed to practice in the state must be members of and pay dues to the State Bar of Wisconsin, a professional association created by the court. Attorney Schuyler File contends that requiring him to join and subsidize the State Bar violates his free-speech and associational rights under the First Amendment. Recognizing that Supreme Court precedent forecloses

this claim, see *Keller v. State Bar of Cal.*, 496 U.S. 1 (1990), File maintains that the Court’s more recent cases—particularly *Janus v. American Federation of State, County, & Municipal Employees, Council 31*, 138 S. Ct. 2448 (2018)—implicitly overruled Keller.

The district court rejected this argument, and properly so. *Keller* may be difficult to square with the Supreme Court’s more recent First Amendment caselaw, but on multiple occasions and in no uncertain terms, the Court has instructed lower courts to resist invitations to find its decisions overruled by implication. *Keller* is binding. We affirm.

I. Background

Wisconsin lawyers must join and pay annual dues to the State Bar of Wisconsin, and active membership in the association is “a condition precedent to the right to practice law” in the state. WIS. S. CT. R. 10.01(1); see also *id.* R. 10.03(5) (establishing the dues requirement); *id.* R. 23.02(1) (providing that no person may practice law in the state without a current license issued by the Wisconsin Supreme Court and active membership in the State Bar). This regulatory regime, often called an “integrated, mandatory[,] or unified bar,” *Kingstad v. State Bar of Wis.*, 622 F.3d 708, 713 n.3 (7th Cir. 2010) (quotation marks omitted), authorizes the State Bar to use membership dues to fulfill the purposes for which it was created. These include “aid[ing] the courts in ... the administration of justice”; “conduct[ing] a program of continuing legal education”; and “maintain[ing] ... high ideals of integrity, learning, competence[,] ... public service[,] and high standards of

conduct” in the bar of the state. WIS. S. CT. R. 10.02(2). To those ends, the State Bar hosts seminars, sponsors amicus briefs, publishes a magazine, proposes legal-ethics rules, and lobbies the government. Some of these activities venture into political and socially sensitive subjects.

Failing to pay bar dues can result in serious consequences. Attorneys who fail to pay dues by the annual due date and remain delinquent after notice and the expiration of a specified grace period are automatically suspended. WIS. STATE BAR BY-LAWS art. I, § 3(a). (The administrative suspension is lifted if the delinquent lawyer pays the late dues plus a small penalty, but this remedy is not available if the dues have been in arrears for three years. *Id.* art. I, § 3(c).)

Suspended lawyers cannot practice law. *Id.*; see also WIS. S. CT. R. 23.02(1). The state supreme court and every judge in the state receives a certified list of all lawyers suspended for nonpayment of dues. WIS. STATE BAR BY-LAWS art. I, § 3(a). Practicing law while suspended violates state legal-ethics rules. WIS. S. CT. R. 20:8.4(f).

The Office of Lawyer Regulation—the court agency that investigates and prosecutes ethics violations—may initiate proceedings to impose additional sanctions, including full license suspension. *See, e.g., In re Fitzgerald*, 735 N.W.2d 913, 916 (Wis. 2007). But the Wisconsin Supreme Court, which has plenary constitutional power to regulate the legal profession in the state, is the ultimate enforcement authority for the lawyer regulatory system—including the licens-

ing rules, bar-membership requirement, and the ethics code—and imposes discipline for violations. WIS. S. CT. R. 21.09; see also *id.* R. 21 pmbl. (“The lawyer regulation system is established to carry out the supreme court’s constitutional responsibility to supervise the practice of law ...”). The Office of Lawyer Regulation acts pursuant to the court’s authority and is the court’s agent for investigating and prosecuting violations. *See id.* R. 21.13.

Schuyler File is an active, dues-paying member of the State Bar. But he does not want to be. He filed suit challenging the constitutionality of the mandatory bar, naming the association’s executive director and its president and the justices of the state supreme court as defendants. He sought a declaration that the mandatory bar is facially incompatible with the First Amendment and an injunction prohibiting the defendants from enforcing the membership and dues requirements.

The justices and State Bar officials filed separate motions to dismiss for lack of subject-matter jurisdiction and failure to state a claim. *See* FED. R. CIV. P. 12(b)(1), (b)(6). Both sets of defendants argued that the Supreme Court’s decision in *Keller* precludes File’s claim on the merits. The justices also challenged File’s standing to sue, arguing that his injury is hypothetical at best and not traceable to them. Additionally, the justices raised a defense of immunity.

The judge rejected the jurisdictional argument, holding that the injury File would suffer if he stopped paying bar dues—automatic suspension of his right to practice law—is certain enough to support his stand-

ing to bring this preenforcement suit for prospective relief. *File v. Kastner*, 469 F. Supp. 3d 883, 886–87 (E.D. Wis. 2020). The judge also rejected the justices’ immunity claim, relying on *Pulliam v. Allen*, 466 U.S. 522, 541–42 (1984). *File*, 469 F. Supp. 3d at 888. Moving to the merits, the judge dismissed the case, ruling that File’s claim “is foreclosed by *Keller*, which only the Supreme Court may overrule.” *Id.* at 891.

II. Discussion

We review the judge’s dismissal order de novo. *Price v. City of Chicago*, 915 F.3d 1107, 1110 (7th Cir. 2019). Our first order of business is the question of standing. The justices (but not the State Bar officials) argue that File alleged nothing more than a hypothetical injury and thus lacks standing to sue.

Article III limits the federal judicial power to “Cases” and “Controversies,” which in turn requires the party invoking the jurisdiction of the federal court to establish his standing to sue. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). To do so, the plaintiff “must demonstrate (1) that he or she suffered an injury in fact that is concrete, particularized, and actual or imminent, (2) that the injury was caused by the defendant, and (3) that the injury would likely be redressed by the requested judicial relief.” *Thole v. U.S. Bank N.A.*, 140 S. Ct. 1615, 1618 (2020).

As noted, this is a pre-enforcement suit: File seeks prospective relief based on the threat of injury—suspension of his right to practice law—if he were to refuse to pay bar dues. “It is well-established that pre-enforcement challenges are within Article III.”

Ezell v. City of Chicago, 651 F.3d 684, 695 (7th Cir. 2011) (quotation marks and alterations omitted). For this type of claim, the Article III minimums are satisfied when “there exists a credible threat of prosecution.” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014) (quotation marks omitted). A person need not violate the law and risk prosecution to bring a pre-enforcement challenge. *Ezell*, 651 F.3d at 695; see also *Schirmer v. Nagode*, 621 F.3d 581, 586 (7th Cir. 2010). A credible threat of prosecution is sufficient to establish injury in fact; an actual prosecution or other enforcement action is not necessary. *Driehaus*, 573 U.S. at 159.

The justices insist that the threat of disciplinary action against File is entirely hypothetical. That’s a puzzling argument in the context of this regulatory scheme. An attorney who fails to pay bar dues is administratively suspended from the practice of law, and every judge in the state receives a list of suspended lawyers. Practicing law while administratively suspended is an ethics violation subject to additional discipline. Under the court’s own rules, there is more than a credible threat of enforcement: the penalty for nonpayment of dues—administrative suspension of the right to practice law—is automatic and universally applicable.

It does not matter that the State Bar processes administrative suspensions or that the Office of Lawyer Regulation initiates misconduct proceedings against lawyers who practice law while suspended. As we’ve explained, the Wisconsin Supreme Court is the ultimate regulatory authority for the practice of law in the state; it promulgates and enforces the

rules governing attorney licensure, bar membership, and ethics. The respective roles of the State Bar and the Office of Lawyer Regulation flow directly from the court.

The justices rely on *Crosetto v. State Bar of Wisconsin*, 12 F.3d 1396 (7th Cir. 1993), but the relevant holding in that case is narrow and does not support their contention that File lacks standing to sue in federal court. Like this case, *Crosetto* was a challenge to Wisconsin's mandatory bar; the plaintiffs named the State Bar, its executive director, and the justices of the state supreme court as defendants. We affirmed the dismissal of the justices from the suit, explaining that the plaintiffs' attorney had conceded in oral argument "that he was unaware of any Wisconsin lawyer ever being disciplined by the [j]ustices for that lawyer's failure to pay dues to the integrated bar." *Id.* at 1403. Based on that concession, we held that the claim against the justices was unripe. *Id.*

Our ripeness holding must be understood in the context of the arguments raised and addressed in the case. Importantly, the automatic administrative suspension was never discussed. Moreover, *Crosetto* was decided long before the elaboration of pre-enforcement standing principles in *Driehaus*, *Ezell*, and *Schirmer* (among other cases). Our ruling in *Crosetto* was therefore a limited one; it does not control here.

The justices also reprise their immunity defense, which turns on a proper understanding of the nature of the claim raised in this suit. The justices enjoy immunity from suits challenging the exercise of their

legislative power to draft and promulgate rules regulating the legal profession. *Sup. Ct. of Va. v. Consumers Union of the U.S., Inc.*, 446 U.S. 719, 734 (1980). In contrast, they are not immune when sued in their prosecutorial or enforcement capacity—provided that the suit seeks prospective relief against the enforcement of the regulatory regime. *Id.* at 736–37; *Reeder v. Madigan*, 780 F.3d 799, 805 (7th Cir. 2015).

In the district court, the parties debated which of these two roles best describes the capacity in which the justices have been sued here. The district judge, however, chose a third option. He construed File’s suit as a claim against the justices in their judicial capacity “as adjudicators of disciplinary matters.” *File*, 469 F. Supp. 3d at 888. Relying on *Pulliam*, 466 U.S. at 541–42, he held that the justices are not immune. *File*, 469 F. Supp. 3d at 888.

The judge reached the right destination by the wrong route. This is a straightforward pre-enforcement suit seeking prospective relief enjoining the justices from enforcing the requirements of State Bar membership and payment of compulsory dues. In short, the justices have been sued in their enforcement capacity, not their legislative or judicial capacity. *See Sup. Ct. of Va.*, 446 U.S. at 734 (listing the “issuance of, or failure to amend” legal-ethics rules as legislative activities and “hear[ing] appeals” as adjudicative activity).

The justices resist this conclusion, arguing that because the Office of Lawyer Regulation initiates and prosecutes disciplinary proceedings, their role with respect to the rules regarding bar membership is leg-

islative only. As we've noted, however, the court has plenary constitutional authority to regulate the legal profession. *In re Crandall*, 754 N.W.2d 501, 507 (Wis. 2008) (“[B]ecause the constitutional grants of authority obligate this court to ensure that courts function efficiently and effectively to provide for the due administration of justice, this court has the inherent and exclusive authority and power to regulate and discipline members of the bar in this state.”). The court created the Office of Legal Regulation, which acts as its agent in the investigation and initiation of misconduct complaints. The court supervises and controls the actions of the agency and remains the ultimate enforcement authority for the regulation of the bar. WIS. S. CT. R. 21 pmbl.; *id.* R. 21.03 (providing that the director of the Office of Lawyer Regulation is appointed by and serves at the pleasure of the state supreme court); *id.* R. 21.12, 21.13 (providing that all components of the lawyer regulatory system act on behalf of the state supreme court). Because File seeks prospective relief enjoining the justices from enforcing the requirements of the mandatory bar, they are not immune.

Before moving on, a few words about the judge's reason for rejecting the justices' immunity claim. As we have noted, he reached the right result for the wrong reason. It was error to rely on the Supreme Court's decision in *Pulliam*, which interpreted § 1983 to permit a claim for prospective relief against a judicial officer acting in his judicial capacity. 466 U.S. at 541–42. Congress abrogated *Pulliam*'s holding in 1996 by amending § 1983 to expressly bar such claims. Federal Courts Improvement Act of 1996, Pub. L. No. 104- 317, § 309, 110 Stat. 3847, 3853. As

amended, § 1983 provides that “in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.”

Though we have not had occasion to note the statutory abrogation of *Pulliam*, other circuits have done so. *See, e.g., Bolin v. Story*, 225 F.3d 1234, 1242 (11th Cir. 2000); *Justice Network Inc. v. Craighead County*, 931 F.3d 753, 763 (8th Cir. 2019); *Moore v. Urquhart*, 899 F.3d 1094, 1104–05 (9th Cir. 2018); *Allen v. DeBello*, 861 F.3d 433, 439 (3d Cir. 2017).

Summing up, File has standing to bring this preenforcement suit against the justices for an injunction blocking the enforcement of the rules requiring bar membership and payment of dues. And because the suit seeks prospective relief against them in their enforcement capacity, they are not immune.

With those threshold questions resolved, we come now to the merits. Our discussion can be brief. File’s claim is squarely foreclosed by the Supreme Court’s decision in *Keller*, which held that the compelled association required by an integrated bar is “justified by the State’s interest in regulating the legal profession and improving the quality of legal services.” 496 U.S. at 13. *Keller* further held that an integrated state bar “may ... constitutionally fund activities germane to those goals out of the mandatory dues of all members.” *Id.* at 14.

The Wisconsin Supreme Court follows *Keller* precisely. *See* WIS. S. CT. R. 10.03(5)(b)1 (providing that “[e]xpenditures that are not necessarily or reasonably

related to the purposes of regulating the legal profession or improving the quality of legal services” may not be funded by compulsory dues). The court’s rules also provide for an optional annual dues deduction for activities that are not germane to the purpose identified in *Keller* and thus may not be funded by compulsory dues. *Id.* R. 10.03(5)(b)2.¹

File responds that *Keller* has been fatally undermined by more recent Supreme Court cases, culminating with *Janus*. The tension between *Janus* and *Keller* is hard to miss. *Keller* rests largely on *Abood v. Detroit Board of Education*, 431 U.S. 209, 235–36 (1977), which rejected a First Amendment challenge to a law requiring public employees to pay mandatory union dues. Analogizing the relationship between a union and its members to the relationship between a state bar association and its members, *Keller* applied *Abood* to uphold California’s mandatory bar. 496 U.S. at 12. The Court overruled *Abood* in *Janus*, holding that it “was poorly reasoned,” had “led to practical problems and abuse,” and was “inconsistent with other First Amendment cases and ha[d] been undermined by more recent decisions.” 138 S. Ct. at 2460.

With *Abood* overruled, the foundations of *Keller* have been shaken. But it’s not our role to decide

¹ File has not raised a *Keller* “germaneness” challenge to any specific State Bar activity funded through compulsory dues. Nor has he challenged the adequacy of the dues-deduction procedures or raised a free-standing compelled-association claim distinct from his compelled speech claim challenging the compulsory dues.

whether it remains good law. Only the Supreme Court can answer that question. *See State Oil Co. v. Khan*, 522 U.S. 3, 20 (1997) (“[I]t is this Court’s prerogative alone to overrule one of its precedents.”). Though we long ago suggested that a lower court might be free to declare that a Supreme Court precedent has been overruled by implication, *see Levine v. Heffernan*, 864 F.2d 457, 461 (7th Cir. 1988), we now know that’s incorrect. The Court’s instructions are clear: “If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case [that] directly controls, leaving to this Court the prerogative of overruling its own decisions.” *Agostini v. Felton*, 521 U.S. 203, 237 (1997) (quotation marks omitted).

On this understanding, we have already declined an invitation to find that *Janus* implicitly overruled *Keller*, though we did so in an unpublished summary decision. *Jarchow v. State Bar of Wis.*, No. 19-3444, 2019 WL 8953257, at *1 (7th Cir. Dec. 23, 2019). Other circuits have reached the same conclusion in published opinions. *Schell v. Chief Just. & Justs. of the Okla. Sup. Ct.*, 11 F.4th 1178, 1190–91 (10th Cir. 2021) (recognizing that *Keller* remains binding); *Taylor v. Buchanan*, 4 F.4th 406, 409 (6th Cir. 2021) (same); *McDonald v. Longley*, 4 F.4th 229, 243 n.14 (5th Cir. 2021) (same); *Boudreaux v. La. State Bar Ass’n*, 3 F.4th 748, 755 (5th Cir. 2021) (same); *Crowe v. Or. State Bar*, 989 F.3d 714, 725 (9th Cir. 2021) (per curiam) (same). The Supreme Court denied certiorari in *Jarchow*, with two justices dissenting. *Jarchow v. State Bar of Wis.*, 140 S. Ct. 1720, 1721 (2020) (Thomas, J., joined by Gorsuch, J., dissenting

from the denial of certiorari). The Court has turned away several additional opportunities to revisit Keller based on Janus—including, most recently, in two cases just a few weeks ago. *Firth v. McDonald*, No. 21-974, 2022 WL 994348 (U.S. Apr. 4, 2022) (mem.); *Schell v. Darby*, No. 21-779, 2022 WL 994342 (U.S. Apr. 4, 2022) (mem.); see also *Crowe v. Or. State Bar*, 142 S. Ct. 79 (2021) (mem.). *Keller* therefore remains binding on us. File must seek relief from the Supreme Court.

AFFIRMED

APPENDIX B

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

SCHUYLER FILE,

Plaintiff,

v.

JILL M. KASTNER, et al.,

Defendants.

Case No. 19-C-1063

DECISION AND ORDER

Plaintiff Schuyler File, an attorney admitted to practice in Wisconsin, brings this suit under 42 U.S.C. § 1983 against the president and executive director of the State Bar of Wisconsin and the chief justice and justices of the Wisconsin Supreme Court. He alleges that the state's requirement that he be a member of the State Bar of Wisconsin violates his rights under the Constitution's First Amendment. Before me now are the defendants' motions to dismiss the complaint for lack of standing and for failure to state a claim upon which relief may be granted.²

² The supreme court justices have also filed a motion to stay discovery pending a ruling on their motion to dismiss. Because I am deciding the motion to dismiss now, I will deny the motion to stay as moot.

I. Background

The State Bar of Wisconsin is an organization created by Wisconsin law through rules promulgated by the Wisconsin Supreme Court. It is an “integrated bar,” that is, it is an association of attorneys in which membership and dues are required as a condition of practicing law in the state. *Keller v. State Bar of Cal.*, 496 U.S. 1, 4–5 (1990). Integrated bars have been subject to numerous constitutional challenges over the course of the last sixty years. The attorneys who bring these challenges usually allege that the state’s conditioning their ability to practice law on their joining and financially supporting an organization that espouses viewpoints with which they may disagree violates their rights to free speech and association under the First Amendment. In prior cases, the Supreme Court of the United States has held that an integrated bar does not violate an attorney’s First Amendment rights so long as the bar uses the attorney’s mandatory dues payment only for purposes that are germane to the goals of “regulating the legal profession and improving the quality of legal services.” *Id.* at 13–14; *see also Lathrop v. Donohue*, 367 U.S. 820 (1961) (holding that Wisconsin’s integrated bar did not violate the First Amendment). Under the holding of these cases, an integrated bar is permitted to engage in speech on topics that are not germane to one of these two goals. However, if it does so, it must rely on a source of funding other than mandatory dues payments. *See Keller*, 496 U.S. at 13–14. To implement the distinction between speech that is germane to the goals of regulating the legal profession and improving the quality of legal services and speech that is not germane to these goals, the State

Bar of Wisconsin allows its members to take what it known as a “*Keller* dues reduction.” If the member does not take this deduction, then the member is presumed to consent to the bar’s using this part of his or her dues payment to fund speech that is not germane to regulating the legal profession or improving the quality of legal services.

The plaintiff is an attorney in private practice who moved to Wisconsin in 2017. He previously practiced in Indiana, which does not have an integrated bar. He does not wish to be a member of, or to pay dues to, the State Bar of Wisconsin, *see* Compl. 27, and he believes that conditioning his ability to practice law on bar membership violates his First Amendment rights. The plaintiff recognizes that, in light of *Keller*, the State Bar of Wisconsin has generally been regarded as constitutional. *See, e.g., Kingstad v. State Bar of Wis.*, 622 F.3d 708 (7th Cir. 2010). However, he contends that two cases decided by the Supreme Court of the United States in recent years have either narrowed or implicitly overruled *Keller*. *See Janus v. Am. Fed’n of State, County & Mun. Employees*, 138 S. Ct. 2448 (2018); *Harris v. Quinn*, 573 U.S. 616 (2014). The plaintiff contends that, under the reasoning of these cases, the State Bar of Wisconsin cannot constitutionally enforce its mandatory membership requirement. He thus commenced the present action under 42 U.S.C. § 1983 against the president and the executive director of the State Bar of Wisconsin (collectively, the “Bar defendants”) and the chief justice and justices of the Wisconsin Supreme Court. He seeks a declaration that the Wisconsin Supreme Court’s rule requiring him to belong to the bar is unconstitutional as well as an injunction that would

prevent the Bar defendants and the justices from enforcing the mandatory membership rule or charging him mandatory dues payments.

The Bar defendants and the justices have each filed a motion to dismiss the complaint. All defendants argue that the complaint fails to state a claim because the rules of the State Bar comply with *Keller* and therefore must be regarded as constitutional unless the Supreme Court overrules *Keller*. In addition, the justices argue that the plaintiff does not have standing to seek relief against them and that they are immune from claims for the type of injunctive relief he seeks. I consider these matters below.

II. Discussion

A. Standing

Article III of the Constitution limits the jurisdiction of federal courts to “Cases” and “Controversies.” U.S. Const., Art. III, § 2. To establish Article III standing, a plaintiff must show (1) an “injury in fact,” (2) a sufficient “causal connection between the injury and the conduct complained of,” and (3) a “likel[i]hood” that the injury “will be redressed by a favorable decision.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992).

The justices contend that the plaintiff cannot show that their conduct caused him to suffer an injury in fact. An injury in fact must be “concrete and particularized” and “actual or imminent, not ‘conjectural’ or ‘hypothetical.’” *Id.* at 560. However, “[a]n allegation of future injury may suffice if the threatened

injury is ‘certainly impending,’ or there is a “substantial risk” that the harm will occur.” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014) (quoting *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 414 n.5 (2013)). Put differently, “[a] plaintiff ‘does not have to await the consummation of threatened injury to obtain preventive relief.’” *Ctr. for Individual Freedom v. Madigan*, 697 F.3d 464, 473 (7th Cir. 2012) (quoting *Babbitt v. United Farm Workers Nat’l Union*, 442 U.S. 289, 298 (1979)). To satisfy the injury-in-fact requirement based on the likelihood of a future injury, the plaintiff must show only that he or she faces “a realistic danger of sustaining a direct injury as a result of the [law]’s operation or enforcement.” *Id.*

In the present case, there is no dispute that the plaintiff has standing to seek declaratory and injunctive relief against the Bar defendants based on the likelihood that he would suffer a future injury. If the plaintiff stopped paying his mandatory bar dues, his membership in the State Bar would be automatically suspended. *See* Wis. Sup. Ct. R. 10.03(6) & Wis. State Bar Bylaws art. I, § 3.³ During the suspension, the plaintiff would be forbidden from practicing law. Wis. Sup. Ct. R. 10.03(6). Obviously, losing the ability to lawfully practice one’s profession is an injury in fact. Moreover, the plaintiff does not have to actually refuse to pay his mandatory dues and thus incur an automatic suspension before he is allowed to seek preventative relief. *See, e.g., Schirmer v. Nagode*, 621 F.3d 581, 586 (2010) (“A person need not risk arrest

³ The State Bar Bylaws are codified as an appendix to Chapter 10 of the Rules of the Wisconsin Supreme Court.

before bringing a pre-enforcement challenge under the First Amendment[.]”). Rather, he will have standing so long as it is substantially likely that if he stops paying his dues, he will suffer an injury. And here, because a suspension automatically follows nonpayment of dues, an injury to the plaintiff is not merely substantially likely, it is certain to occur. Thus, the plaintiff unquestionably has standing to seek an injunction preventing the Bar defendants from assessing and collecting mandatory dues payments.

The justices, however, contend that even if the plaintiff would suffer an injury if he stopped paying his bar dues, they would not be the ones to inflict it. They point out that the supreme court does not initiate disciplinary proceedings against attorneys; instead, such proceedings are commenced by an agency of the court—the Office of Lawyer Regulation (“OLR”). *See* Wis. Sup. Ct. R. 21.02(1). The only role the supreme court plays in lawyer discipline is to adjudicate misconduct complaints filed by OLR and to impose an appropriate sanction if misconduct is found. *See* Wis. Sup. Ct. R. 21.09(1). However, while it is true that the supreme court does not initiate misconduct proceedings, it does not follow that the plaintiff lacks standing to seek an injunction against the court’s disciplining him for failing to pay his bar dues. Consider what is likely to occur if the plaintiff stops paying his dues. Once they are overdue for more than 120 days, his license to practice law will automatically be suspended under Rule 10.03(6) and the State Bar Bylaws. If the plaintiff continues to practice law after his automatic suspension, he will be in violation of the supreme court’s rules and will be subject to discipline for practicing while his license

was suspended. *See, e.g., In re FitzGerald*, 304 Wis. 2d 592, 597–98 (2007) (disciplining lawyer for practicing during administrative suspension for failure to pay bar dues). Once OLR learns that the plaintiff is continuing to practice law, it will likely commence disciplinary proceedings against him. Without an injunction against enforcement of the mandatory bar requirement, the supreme court will find the plaintiff guilty of a rules violation and impose discipline, which could include revoking his law license and imposing a monetary penalty. *See Wis. Sup. Ct. R. 21.16(1m)*. Any discipline the court imposes would be an injury in fact. Because this chain of events is substantially likely to occur if the plaintiff stops paying his bar dues yet continues to practice law in Wisconsin, the plaintiff has standing to obtain pre-enforcement relief. For again, a plaintiff does not have to risk arrest or incurring other forms of harm in order to have standing to obtain an injunction to prevent that harm from coming to pass. *Schirmer*, 621 F.3d at 586.

The justices point out that, in 1993, the Seventh Circuit determined that a lawyer lacked standing to pursue a claim for injunctive against the supreme court to prevent them from enforcing the mandatory dues requirement. *See Crosetto v. State Bar of Wis.*, 12 F.3d 1396, 1403 (7th Cir. 1993). In that case, however, the court focused on the lack of evidence suggesting that the supreme court was likely to discipline a lawyer for failing to pay bar dues. The court noted that the plaintiff “conceded that he was unaware of any Wisconsin lawyer ever being disciplined by the Justices for that lawyer’s failure to pay dues to the integrated bar.” *Id.* Things have apparently

changed since 1993. The plaintiff has cited at least two cases in which the Wisconsin Supreme Court disciplined attorneys for practicing law after failing to pay mandatory dues. *See In re Capistrant*, 364 Wis. 2d 530, 534 (2015); *In re FitzGerald*, 304 Wis. 2d at 597–98. Moreover, unless the supreme court decides to voluntarily abandon the mandatory dues requirement, it stands to reason that the court will discipline attorneys who practice law without paying their dues. Because the supreme court has not suggested that it intends to abandon its rule requiring bar membership for all attorneys, I conclude that the plaintiff has standing to seek declaratory and injunctive relief to prevent the supreme court from disciplining him for failing to pay his mandatory dues.

B. Immunity

The justices next contend that they are immune from the plaintiff's suit for injunctive relief. Here, the defendants rely on a Supreme Court decision holding that state supreme court justices are immune from suits for injunctive relief when they are sued in their legislative capacity, *i.e.*, as promulgators of the rules governing lawyers. *See Supreme Court of Va. v. Consumers Union of U.S., Inc.*, 446 U.S. 719, 731–34 (1980). However, the plaintiff here does not sue the justices in their capacities as rule makers—he does not seek an injunction requiring them to enact, amend, or repeal any rule. Rather, he sues the justices in their capacity as adjudicators of disciplinary matters—he seeks an injunction preventing them from disciplining him for practicing law while he is not a member of the bar. The Supreme Court has held that state judges in their judicial capacities are

not immune from suits for injunctive relief. *See Puliam v. Allen*, 466 U.S. 522, 541–42 (1984). Accordingly, the justices are not immune from suit in this matter.

C. Merits

I now turn to the merits of the plaintiff’s constitutional claim. The relevant facts are undisputed, and the plaintiff’s claim presents a pure question of law. Therefore, his claim may be resolved on a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). Before moving on, I note that the plaintiff does not bring an as-applied challenge to the integrated bar in which he contends that the State Bar has used mandatory dues payments to fund speech or activities that are not germane to the goals of regulating the legal profession or improving the quality of legal services. *Cf. Kingstad*, 622 F.3d at 718–21 (considering “germaneness” claim). Rather, the plaintiff brings a facial challenge to the mandatory dues requirement, contending that it is inconsistent with Supreme Court cases decided since *Keller*. For this reason, I do not address the Bar defendants’ arguments relating to a possible as-applied challenge. *See Br. in Supp.* at 11–15. Moreover, although the plaintiff in his brief cites various State Bar activities and publications and contends that they may not constitutionally be funded with mandatory bar dues, I do not understand him to be claiming that the Bar funded these activities in violation of *Keller*. Instead, I understand him to be using these activities as examples to show that the State Bar’s expression presents the same kinds of problems that concerned the Supreme Court in *Janus*.

The heart of the plaintiff's argument is that *Harris* and *Janus* call into question *Keller's* holding that an integrated bar is constitutional so long as the bar uses mandatory dues payments only to fund matters that are germane to the goals of regulating the legal profession and improving the quality of legal services. The plaintiff first contends that, in *Harris*, the Court narrowed *Keller* by suggesting that a bar cannot use mandatory dues payments to fund speech unless that speech is germane to the goal of regulating the legal profession. The plaintiff understands the *Harris* Court to have implied that a bar cannot use mandatory dues to fund speech that is germane to the goal of improving the quality of legal services. The plaintiff then contends that, by overruling *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), the Court in *Janus* undermined a key premise of *Keller*, which was that an enforceable line could be drawn between speech that is germane to a certain topic and speech that is not. The plaintiff contends that the combined effect of *Harris* and *Janus* should cause the Supreme Court to overrule *Keller* and hold that integrated bars such as Wisconsin's are unconstitutional.

Importantly, however, a lower court cannot overrule a Supreme Court case, even if later Supreme Court cases call the holding of the earlier case into question. See, e.g., *State Oil Co. v. Khan*, 522 U.S. 3, 20 (1997) (“[I]t is this Court’s prerogative alone to overrule one of its precedents.”); *Agostini v. Felton*, 521 U.S. 203, 237 (1997) (reaffirming that “[i]f a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow

the case which directly controls, leaving to this Court the prerogative of overruling its own decisions”); *Price v. City of Chicago*, 915 F.3d 1107, 1111 (7th Cir. 2019) (quoting *Khan* and *Agostini*); *Nat’l Rifle Ass’n of Am., Inc. v. City of Chicago*, 567 F.3d 856, 857 (7th Cir. 2009), *overruled on other grounds by McDonald v. City of Chicago*, 561 U.S. 742 (2010); (“Repeatedly, in decisions that no one thinks fossilized, the Justices have directed trial and appellate judges to implement the Supreme Court’s holdings even if the reasoning in later opinions has undermined their rationale.”). A lower court may not overrule a Supreme Court case even if later cases “have deeply shaken” the earlier case’s foundation, *Price*, 915 F.3d at 1119, or “demolished” its “intellectual underpinning,” *Nat’l Rifle Ass’n*, 567 F.3d at 858. Thus, if a Supreme Court case has direct application to a case, a lower court must follow it even if the court thinks it probable that the Supreme Court will overrule the case in the future.

Here, the plaintiff concedes that *Keller* has direct application to his claim. But for several reasons, he contends that I am still free to disregard it. First, he contends that *Harris* “narrowed” *Keller* by limiting the use of mandatory dues to activities “connected with proposing ethical codes and disciplining bar members.” *Harris*, 573 U.S. at 655. But *Harris* did not involve mandatory state bar membership and did not purport to partially overrule *Keller* by holding that mandatory bar dues could not be used for all the purposes deemed acceptable in *Keller*. The passage from *Harris* that the plaintiff cites is merely a summary of *Keller*’s holding. Nothing in *Harris* implies that the summary was intended to narrow or otherwise disturb *Keller*. Indeed, in the paragraph follow-

ing the sentence the plaintiff cites, the Court favorably describes *Keller*'s full holding: "The portion of the rule that we upheld [in *Keller*] served the 'State's interest in regulating the legal profession and improving the quality of legal services.'" *Id.* Thus, *Harris* cannot be understood as a narrowing of *Keller*.

Second, the plaintiff contends that because, in the wake of *Janus*, the Supreme Court entered a "grant, vacate, and remand order" in an Eighth Circuit case involving mandatory bar membership, *see Fleck v. Wetch*, 139 S. Ct. 590 (2018), lower courts are now free to "reconsider *Keller* in light of *Janus*," Br. in Opp. at 21. However, the Court's entering a GVR order does not grant lower courts permission to overrule Supreme Court precedent. All a GVR order does is signal that the Supreme Court would like the lower court to reconsider its vacated decision in light of the new precedent. *See Klikno v. United States*, 928 F.3d 539, 544 (7th Cir. 2019). Even the lower court subject to the GVR order remains bound by Supreme Court cases that the Court has not yet overruled. *See Fleck v. Wetch*, 937 F.3d 1112, 1114–15 (8th Cir. 2019) (Eighth Circuit deems itself bound by *Keller* even after Court entered GVR order).

Third, the plaintiff contends that "*Janus* implicitly overruled *Keller*." Br. in Opp. at 21. This argument relies on statements in cases acknowledging that the Supreme Court may overrule a case without explicitly saying so. *See Levine v. Heffernan*, 864 F.2d 457, 461 (7th Cir. 1988). However, before a lower court may conclude that the Supreme Court has implicitly overruled one of its precedents, the lower court must be "certain or almost certain that the decision or doc-

trine would be rejected by the higher court if a case presenting the issue came before it.” *Olson v. Paine, Webber, Jackson & Curtis, Inc.*, 806 F.2d 731, 741 (7th Cir. 1986). “This is a high standard and will rarely be met.” *Id.* And it is not met here. *Janus* did not involve mandatory bar membership; it involved compelled subsidy of a public-sector labor union. Although the Court’s reasoning in *Janus* might in some respects support the argument that mandatory bar membership is unconstitutional, the Court did not in any way suggest that it was overruling *Keller*. Moreover, it must be remembered that a lower court is not free to deem Supreme Court precedent defunct even if a later case demolishes the intellectual underpinnings of the earlier case. *Nat’l Rifle Ass’n*, 567 F.3d at 858. A lower court should not be able to evade this restriction by using the reasoning of a later case to deem the earlier case implicitly overruled.

In any event, any doubt about whether the Supreme Court implicitly overruled *Keller* in *Janus* is removed by considering the Court’s latest action in this area. The premise of the doctrine of implicit overruling is that the Court has already overruled one of its precedents and is merely awaiting an opportunity to make the overruling explicit. See *Levine*, 864 F.2d at 461 (for implied overruling to apply, lower court must be almost certain that “the Court would repudiate the prior ruling if given the opportunity”); *Olson*, 806 F.2d at 741 (“The standard for declaring a decision or doctrine of a higher court defunct is . . . whether the lower court is certain or almost certain that the decision or doctrine would be rejected by the higher court *if a case presenting the issue came before it.*” (emphasis added)). Recently, the Court was pre-

sented with an opportunity to overrule *Keller*. In *Jarchow v. State Bar of Wisconsin*, No. 19-C-266, 2019 WL 6728258 (W.D. Wis. Dec. 11, 2019), a Wisconsin attorney alleged that the State Bar of Wisconsin violates the First Amendment by charging mandatory dues. The plaintiff acknowledged that *Keller* was controlling but argued that *Janus* had eroded its foundations. The trial court deemed itself bound by *Keller* and noted that only the Supreme Court may overrule it. *Id.* at *1. After the Seventh Circuit likewise deemed itself bound by *Keller*, the plaintiffs filed a petition for certiorari with the Supreme Court, thus presenting the Court with the opportunity to make its alleged implicit overruling of *Keller* explicit. But the Supreme Court denied the petition for certiorari. *See* Sup. Ct. Docket No. 19-831, 2020 WL 2814314 (June 1, 2020). Because the Supreme Court passed up this opportunity to explicitly overrule *Keller*, it is impossible for a lower court to now conclude that the Supreme Court has already implicitly overruled it. Indeed, although two Justices dissented from the denial of certiorari in *Jarchow*, not even they suggested that the Court had already implicitly overruled *Keller*. To the contrary, they allowed that, although *Janus* called the reasoning in *Keller* into question, its holding could survive “on the basis of new reasoning that is consistent with *Janus*.” *Id.* at *1 (Thomas, J., dissenting). They also emphasized that, “[s]hort of a constitutional amendment, only [the Court] can rectify [its] own erroneous constitutional decisions.” *Id.* at 2. Thus, the dissenters must have been of the view that the Court did not already implicitly overrule *Keller* in *Janus*.

Accordingly, I conclude that the plaintiff's claim is foreclosed by *Keller*, which only the Supreme Court may overrule. The defendants' motions to dismiss the claim under Rule 12(b)(6) will be granted.

III. Conclusion

For the reasons stated, IT IS ORDERED that the defendants' motions to dismiss the complaint for failure to state a claim (ECF Nos. 14 & 19) are GRANTED. The motions are denied to the extent they seek dismissal for lack of standing or on immunity grounds. IT IS FURTHER ORDERED that the supreme court justices' motion to stay (ECF No. 16) is DENIED as MOOT. Dated at Milwaukee, Wisconsin, this 29th day of June, 2020.

s/Lynn Adelman
LYNN ADELMAN
United States District Judge

APPENDIX C

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
Milwaukee Division**

SCHUYLER FILE,

Plaintiff,

v.

JILL M. KASTNER, in her official capacity as president of the State Bar of Wisconsin; LARRY MARTIN, in his official capacity as executive director of the State Bar of Wisconsin; Chief Justice PATIENCE ROGGENSACK, Justices SHIRLEY ABRAHAMSON, ANN WALSH BRADLEY, ANNETTE ZIEGLER, REBECCA BRADLEY, DANIEL KELLY, and REBECCA DALLET, in their official capacities as members of the Wisconsin Supreme Court,
Defendants.

Case No. 19-C-1063

Complaint

COMPLAINT

1. The First Amendment guarantees a right to associate and a right not to associate, *Heffernan v. City*

of *Paterson*, 136 S. Ct. 1412, 1421 (2016), and those rights are incorporated against the states by the Due Process Clause of the Fourteenth Amendment.

2. A state requirement that forces people to associate must “be a comprehensive regulatory scheme” that passes at least exacting scrutiny; namely, it must “serve a compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms.” *Knox v. SEIU, Local 1000*, 567 U.S. 298, 310 (2012). Regulatory schemes meeting these standards are “exceedingly rare.” *Id.*

3. The State of Wisconsin’s regulatory scheme for licensing attorneys by requiring attorneys to join the State Bar of Wisconsin is not narrowly tailored to serve a compelling government interest. *See Harris v. Quinn*, 573 U.S. 616, 655 (2014).

4. At the same time, the State of Wisconsin’s requirement of mandatory membership in and dues for the State Bar of Wisconsin for all attorneys licensed to practice in the courts of the state forces attorneys to associate with and subsidize an organization that purports to speak on their behalf regarding controversial legal, legislative, and political matters. *See Janus v. AFSCME*, 138 S. Ct. 2448 (2018).

5. Plaintiff Schuyler File therefore brings this suit against the president and executive director of the State Bar of Wisconsin and the Chief Justice and Justices of the Wisconsin Supreme Court under 42 U.S.C. § 1983, seeking declaratory and injunctive relief for their violations of his rights.

PARTIES

6. Plaintiff Schuyler File is an attorney in the private practice of law who works and resides in Waukesha County, Wisconsin. He has been a member of the State Bar of Wisconsin since December 2017, when he moved to this state to pursue a new career opportunity. He previously practiced in Indiana, a state that does not have a mandatory bar.

7. Defendants Jill M. Kastner and Larry Martin are the president and executive director, respectively, of the State Bar. In those roles, they are responsible for maintaining the mandatory membership requirement and collecting the mandatory dues. Rogers is also an attorney with the Milwaukee office of Legal Action of Wisconsin. Martin's offices are in Dane County, Wisconsin.

8. Defendants Chief Justice Patience Roggensack and the justices of the Wisconsin Supreme Court are responsible for promulgating the Supreme Court Rules (SCR). These rules make bar membership mandatory for attorneys in Wisconsin. SCR 10.01(1). The rules also empower the bar to set the annual dues attorneys must pay. SCR 10.03(5). Their offices are in Dane County, Wisconsin.

JURISDICTION AND VENUE

9. This case raises claims under the First and Fourteenth Amendments of the United State Constitution and 42 U.S.C. § 1983. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1343.

10. Venue is appropriate under 28 U.S.C. § 1391(b)(1) and (2) because the plaintiff and lead defendant are located in and a substantial portion of the events giving rise to the claims occurred in the Eastern District of Wisconsin.

FACTUAL ALLEGATIONS

11. The rules adopted by the justices of the Wisconsin Supreme Court compel every attorney to belong to the State Bar of Wisconsin in order to practice law in Wisconsin. SCR § 10.01(1) (“membership in the association shall be a condition precedent to the right to practice law in Wisconsin.”); § 10.03(1); § 10.03(4)(a).

12. The rules adopted by the justices of the Wisconsin Supreme Court authorize the State Bar to collect dues from all of its members. SCR § 10.03(5)(a). In 2018 the dues were \$258.

13. As a Wisconsin attorney, Mr. File is forced to belong to the State Bar and pay its dues in order to pursue his profession in the state. If he failed to do so, he could be sent to jail for a year and fined \$500 or both for engaging in the unauthorized practice of law. Wis. Stat. § 757.30.

14. Defendants Ms. Kastner and Mr. Martin act under color of state law in enforcing mandatory membership and collecting dues. The state bar is somewhat unique in its nature as both an agency of the state Supreme Court and a trade association, but the U.S. Supreme Court has held that its guild-like

qualities make it an appropriate subject for review as a mandatory association and compelled subsidy. *Keller v. State Bar of California*, 496 U.S. 1, 11-13 (1990).

15. The State Bar does not serve as the formal regulatory system for legal ethics in Wisconsin. The Board of Bar Examiners is a state agency of the judicial branch responsible for ensuring the character and competence of new entrants to the practice. SCR Ch. 40. The Board of Bar Examiners is also the state agency responsible for ensuring compliance with the Wisconsin Supreme Court's rules for continuing legal education. SCR Ch. 31. The Office of Lawyer Regulation is a state agency of the judicial branch responsible for ensuring compliance with the Rules of Professional Conduct governing attorneys in Wisconsin. SCR Ch. 21. The Judicial Education Committee is a committee appointed by the Wisconsin Supreme Court to ensure compliance with the Court's rules for continuing education for judges. SCR Ch. 32. The Judicial Commission is a state agency responsible for ensuring compliance with the Judicial Code of Conduct. Wis. Stat. Ch. 757.

16. Twenty other states have voluntary state bars that do not coerce attorneys to be members or pay dues to the bar.

17. When the State Bar lobbies on "general policy items of importance to the legal profession," it does so "on behalf of the entire membership," State Bar of Wisconsin Website, "Government Relations," at [https://www.wisbar.org/aboutUs/GovernmentRelations/Pages/governmentrelations.aspx#/,](https://www.wisbar.org/aboutUs/GovernmentRelations/Pages/governmentrelations.aspx#/) purporting to

represent the views of all members. Last legislative session, the State Bar spent over \$520,000 lobbying the Wisconsin state legislature. Wisconsin Ethics Commission Website, “Eye on Lobbying,” <https://lobbying.wi.gov/Who/PrincipalInformation/2017REG/Information/7048?tab=Profile>. The State Bar also engages in legislative advocacy activities with Congress and through the American Bar Association. See “Board Adopts Policy on Dues Rebate Amount, Supports Pro Hac Vice Exemption,” WisBarNews (Feb. 9, 2018), <https://www.wisbar.org/NewsPublications/Pages/GeneralArticle.aspx?ArticleID=26170> (deduction will cover “direct lobbying on policy matters before the Wisconsin Legislature and U.S. Congress.”).

18. The State Bar also engages in a wide variety of ideologically charged activities that fall outside the formal confines of “lobbying.”

19. For instance, the State Bar’s “Legal Innovation in Wisconsin” initiative for 2018 chose as one of its six “Legal Innovators” the founder of TransLaw Help Wisconsin, a clinic for transgendered people. Ed Finkel, “6 Big Ideas: 2018 Wisconsin Legal Innovators,” Wis. Law. (Nov. 2018). The article notes that she was coauthor of *Sexual Orientation, Gender Identity, and the Law*, a book published by the State Bar in 2018.

20. The State Bar’s 2018 annual meeting included among its featured speakers Richard Painter, who served in the White House of George W. Bush but became a Democrat and was at the time of his speech a Democratic candidate for U.S. Senate. “Annual Meet-

ing 2018,” State Bar of Wisconsin, <https://www.wisbar.org/AMC/2018/pages/speakers.aspx>. News reports describe Painter as a “vocal,” “visible,” “prominent,” “prolific,” “unflagging,” and “vociferous” critic of President Trump.

21. These examples illustrate the simple reality that virtually everything the State Bar does takes a position on the law and matters of public concern. The recipients of awards, the topics and authors it selects for books and articles, the topics and speakers it selects for continuing legal education seminars and conferences—everything about the State Bar requires it to pick-and-choose as it speaks and publishes about the law. Like the public-sector collective bargaining in Janus, almost all of its activities are inherently about the law and thus of public concern; there can be no logical line drawn that sets “direct lobbying” on one side and renders everything else non-ideological and of private concern. When the State Bar picks the founder of TransLaw to write a supposedly definitive, restatementlike book on sexual orientation in Wisconsin law, it will likely get a different text than if it had asked the legal counsel to Wisconsin Family Action. When it asks a prominent in-house corporate attorney to write a neutral book on contracts, it will likely get a different text than if it had asked a tenants’ rights lawyer. Because the State Bar is always speaking about the law, and because lawyers come to the law with different viewpoints, jurisprudential principles, backgrounds, and experiences, the State Bar’s speech on all legal topics contains some element of ideology and touches on issues of public concern.

COUNT I

By continuing to mandate his membership and charge him dues, Defendants are violating Mr. File's First Amendment rights to free speech and freedom of association.

22. The allegations contained in all preceding paragraphs are incorporated herein by reference.

23. The rights to free speech and freedom of association in the First Amendment have been incorporated to and made enforceable against the states through the Fourteenth Amendment guarantee of Due Process. *NAACP v. Alabama*, 357 U.S. 449 (1958); *Gitlow v. New York*, 268 U.S. 652 (1925).

24. The Chief Justice and Justices of the Wisconsin Supreme Court have adopted a requirement of mandatory membership and dues for all attorneys licensed in Wisconsin.

25. Ms. Kastner and Mr. Martin are enforcing that mandatory membership requirement and charging dues from Mr. File under color of state law.

26. Virtually every aspect of the association led by Ms. Kastner and Mr. Martin is public-facing in that it touches upon the law, and therefore forces Mr. File to be associated with and support speech with which he may not agree.

27. Mr. File does not affirmatively consent to being a member of the State Bar or paying dues to the State Bar.

28. The actions of the Defendants constitute a violation of Mr. File's First Amendment rights to free speech and freedom of association to not join or subsidize an organization without his affirmative consent.

29. The Defendants lack a compelling state interest to justify their actions.

30. The Defendants' actions are not narrowly tailored to the means least restrictive of Mr. File's freedoms.

31. Mr. File is entitled to an injunction under 42 U.S.C. § 1983 ordering Defendants to immediately end his membership and stop charging him dues.

PRAYER FOR RELIEF

Plaintiff Schuyler File respectfully requests that this Court:

a. Declare that requiring the Wisconsin Supreme Court's rules requiring Mr. File to belong to the State Bar of Wisconsin are unconstitutional.

b. Enjoin the Justices of the Wisconsin Supreme Court from enforcing their rules requiring State Bar membership through the attorney disciplinary process;

c. Enjoin Ms. Kastner and Mr. Martin from enforcing the mandatory membership rule or charging mandatory dues to Mr. File;

d. Award Mr. File his costs and attorneys' fees under 42 U.S.C. § 1988; and

e. Award any further relief to which Mr. File may be entitled.

Dated: July 25, 2019

Respectfully Submitted, SCHUYLER FILE

By:

Daniel R. Suhr (Wisconsin #106558)

(admitted EDWI May 6, 2019)

Jeffrey M. Schwab (pro hac vice motion forthcoming)

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APPENDIX D

**SCR CHAPTER 10
REGULATION OF THE STATE BAR**

JUDICIAL COUNCIL COMMITTEE'S NOTE, 1979:
The following rules, called the state bar rules, govern the state bar of Wisconsin and its members. SCR 10.01 is in the 1977 Wisconsin statutes as section 758.25. SCR 10.02 to 10.14 were originally adopted by the supreme court on December 7, 1956, effective January 1, 1957. They were amended on February 9, 1972; June 16, 1975; November 1, 1976; November 18, 1977; March 6, 1978; and December 14, 1978. The rules were originally numbered 1 to 14 and have been clarified and numbered SCR 10.02 to 10.14 for uniformity and convenience. See appendix for bylaws for state bar of Wisconsin. Certain provisions relating to fees will be contained in SCR 40.16.

SCR 10.01 State Bar of Wisconsin. (1) There shall be an association to be known as the "state bar of Wisconsin" composed of persons licensed to practice law in this state, and membership in the association shall be a condition precedent to the right to practice law in Wisconsin.

(2) The supreme court by appropriate orders shall provide for the organization and government of the association and shall define the rights, obligations and conditions of membership therein, to the end that the association shall promote the public interest by maintaining high standards of conduct in the legal profession and by aiding in the efficient administration of justice.

SCR 10.02 Organization of the state bar of Wisconsin. (1) Creation of Association. All persons licensed to practice law in this state are organized as an association to be known as the "state bar of Wisconsin," subject to the provisions of this chapter. The rules of this chapter, which are adopted in the exercise of the court's inherent authority over members of the legal profession as officers of the court, may be referred to as "state bar rules." The state bar may, for the purpose of carrying out the purposes for which it is organized, sue and be sued, enter into contracts, acquire, hold, encumber and dispose of real and personal property.

(2) Purposes. The purposes of the association are to aid the courts in carrying on and improving the administration of justice; to foster and maintain on the part of those engaged in the practice of law high ideals of integrity, learning, competence and public service and high standards of conduct; to safeguard the proper professional interests of the members of the bar; to encourage the formation and activities of local bar associations; to conduct a program of continuing legal education; to assist or support legal education programs at the preadmission level; to provide a forum for the discussion of subjects pertaining to the practice of law, the science of jurisprudence and law reform and the relations of the bar to the public and to publish information relating thereto; to carry on a continuing program of legal research in the technical fields of substantive law, practice and procedure and make reports and recommendations thereon within legally permissible limits; to promote the innovation, development and improvement of means to deliver legal services to the people of Wis-

consin; to the end that the public responsibility of the legal profession may be more effectively discharged.

(3) Definition. In this chapter, "state bar" means the state bar of Wisconsin.

SCR 10.03 Membership. (1) Persons included in membership. As of the effective date of this rule, membership of the state bar consists of all those persons who on that date are licensed to practice law in this state. After the effective date of this rule, the membership includes all persons who become licensed to practice law in this state; subject in each case to compliance with the conditions and requirements of membership. Residence in this state is not a condition of eligibility to membership in the state bar.

(2) Enrollment. Every person who becomes licensed to practice law in this state shall enroll in the state bar by registering his or her name and social security number with the association within 14 days after admission to practice. Every change after enrollment in any member's office address or social security number shall be reported promptly to the state bar. The social security number of a person enrolling in the state bar may not be disclosed to any person or entity except the supreme court and its agencies, or as otherwise provided by supreme court rules.

(3) Classes of membership. (a) The members of the state bar are divided into 4 classes as follows:

1. Active members. The class of active members includes all members of the state bar, including those designated as senior active members, who are author-

ized to engage in the practice of law, either full-time or part-time, salaried or non-salaried, regardless of age. Commencing July 1, 2021, upon attaining age 75, an active member is designated as a “senior active member” unless a written notice requesting enrollment in a different membership class is filed.

2. Inactive Members. The class of inactive members includes those members of the state bar who are eligible for active membership who have filed with the state bar written notice requesting enrollment in the class of inactive members. An inactive member may not practice law in this state other than pro bono service as provided in SCR 10.03 (3) (am).

3. Judicial Members. The class of judicial members includes the following persons: supreme court justices, court of appeals judges, circuit court judges, full-time circuit court commissioners, full-time municipal court judges, supreme court commissioners, court of appeals staff attorneys, federal district court judges, federal appellate court judges, federal bankruptcy judges, federal magistrate judges, federal administrative law judges, and retired justices and judges who are eligible for temporary judicial assignment and are not engaged in the practice of law. Any judicial member may elect to become an active member with all rights of active membership except to hold office as an officer or governor or to practice law.

4. Emeritus Members. The class of emeritus members includes those members who are at least 70 years of age who are in good standing and who have filed with the state bar written notice requesting en-

rollment in the class of emeritus members. An emeritus member may not practice law in this state other than pro bono service as provided in SCR 10.03 (3) (am). Members who have enrolled in this class of membership prior to July 1, 2021 retain all the privileges of active membership including the right to practice law, and need not pay membership dues.

(3) (am) Pro bono service by inactive or emeritus members. 1. An inactive or emeritus member may provide pro bono legal services as defined in SCR 31.01(11) through a qualified pro bono program as defined in SCR 31.01(12) subject to the limitations and requirements of this subsection. A member who is providing only pro bono legal services under this subsection shall pay no additional dues, fees, or assessments than those assigned to their membership class. Each such member must comply with the conditions under 2 through 4 of this section.

2. Supervision and limitations.

a. Supervision by attorney. The member must perform all activities authorized by this chapter under the general supervision of a qualified pro bono program.

b. Without fee or expectation of a fee. The pro bono legal services must be provided without fee or expectation of a fee. The prohibition against compensation for the attorney contained in this subsection does not prevent the qualified pro bono program from reimbursing the attorney for actual expenses incurred while rendering services under this chapter or from paying continuing legal education attendance fees on

behalf of the attorney. Nothing in this subsection prevents a qualified pro bono program from receiving court-awarded or statutory attorneys' fees for pro bono legal services rendered by the attorney.

3. Certification. Permission for an attorney to perform services under this subsection is effective upon filing with the state bar of Wisconsin a certification from a qualified pro bono program and the attorney stating that the attorney:

a. Is currently associated with the program and that the attorney will be practicing under the general supervision of the program;

b. Is in good standing, does not have a pending disciplinary proceeding, and has never been disbarred or had their license to practice law revoked or suspended in this state or any other jurisdiction;

c. Will only provide pro bono legal services as defined in SCR 31.01(11); and

d. Will at all times comply with the Wisconsin supreme court rules of professional conduct for attorneys set forth in Wisconsin supreme court rules chapter 20 and the rules and standards for training and conduct established by the qualified pro bono program provider which petitioned for the member's pro bono status.

4. Withdrawal of certification.

a. Withdrawal of permission to perform services. Permission to perform services under this chapter

must cease immediately upon the filing with the state bar of Wisconsin of a notice either from the qualified pro bono program stating that the attorney has ceased to be associated with the program, which notice must be filed within 30 days after such association has ceased, or from the Wisconsin supreme court, in its discretion, at any time, stating that permission to perform services under this chapter has been revoked. A copy of such notice must be mailed to the attorney involved and to the qualified pro bono program.

b. Notice of withdrawal. If an attorney's certification under this chapter is withdrawn for any reason, the qualified pro bono program must immediately file a notice of such action in the official file of each matter pending before any court or tribunal in which the attorney appeared.

(3) (b) 1. Any inactive or emeritus member in good standing who has actively practiced law in this state during the last 10 years may change his or her classification to that of an active member by filing with the state bar a written request for transfer to the class of active members and by paying the dues required of active members.

2. a. Any inactive or emeritus member in good standing who has not actively practiced law in this state during the last 10 years may change his or her classification to that of an active member by filing with the state bar a written request for transfer to the class of active members, paying the dues required of active members, and obtaining supreme court approval as provided in subd. 2. b.

b. Any inactive or emeritus member described in subd. 2. a. seeking to change his or her classification to that of an active member shall file a copy of his or her request for transfer to active membership with both the board of bar examiners and the office of lawyer regulation. The member shall pay \$200 each to the board of bar examiners and the office of lawyer regulation, which payment shall accompany the copy of the request. Within 90 days after receipt of the copy of the request, the board of bar examiners shall make a determination regarding compliance with continuing legal education requirements and file its finding with the clerk of the supreme court. Within 90 days after receipt of the copy of the request, the office of lawyer regulation shall investigate the eligibility of the requestor and file a response with the clerk of the supreme court in support of or in opposition to the request. Following receipt of the determination of the board of bar examiners and the response of the office of lawyer regulation, the supreme court shall consider and grant or deny the inactive or emeritus member's request for transfer to active membership.

(bf) Any judicial member who is no longer serving in a judicial office may change his or her classification to that of an active member by filing with the state bar a written request for transfer to the class of active members and paying the dues required of active members.

(bm) Any inactive member in good standing may change his or her classification to that of an emeritus member if otherwise qualified to become an emeritus

member provided that the requirements of such membership class are met.

(c) No judicial, inactive, or emeritus member may practice law in this state or hold office or vote in any election conducted by the state bar provided however that an inactive or emeritus member may provide pro bono legal services consistent with SCR 10.03 (3) (am). Subject to the exception in SCR 10.03 (3) (am), no person engaged in the practice of law in this state in his or her own behalf or as an assistant or employee of an active member of the state bar, or occupying a position, the duties of which require the giving of legal advice or service in this state, may be enrolled as an inactive or emeritus member.

(4) (a) No individual other than an enrolled active member of the state bar may practice law in this state or in any manner purported to be authorized or qualified to practice law provided however, that an inactive or emeritus member may provide pro bono legal services consistent with SCR 10.03 (3) (am).

(b) A court or judge in this state may allow a non-resident counsel to appear and participate in a particular action or proceeding in association with an active member of the state bar of Wisconsin who appears and participates in the action or proceeding. An order granting nonresident counsel permission to appear and participate in an action or proceeding shall continue through subsequent appellate or circuit court actions or proceedings in the same matter, provided that nonresident counsel files a notice of the order granting permission with the court handling

the subsequent appellate or circuit court action or proceeding.

1. Counsel who seek to provide legal services under SCR 10.03 (4)(b) shall provide the information listed in Appendix A to this rule. The applicant may also include additional information supporting the request for admission pro hac vice.

2. Counsel who seek to provide legal services under SCR 10.03 (4)(b) shall pay a nonrefundable fee of two-hundred and fifty dollars (\$250) for each application for admission pro hac vice. The fee shall be waived if the application certifies that the attorney is employed by an agency providing legal services to indigent clients and will be appearing on behalf of an indigent client, or that the applicant will otherwise be appearing on behalf of an indigent client in the proceeding and will be charging no fee for the appearance.

Wisconsin Comment

The Wisconsin Supreme Court has directed that the \$250 fee established in SCR 10.03 (4)(b)2 is to be paid to the State Bar of Wisconsin, which shall administer and allocate the fee according to the terms of this court's rule and a Memorandum of Understanding between the State Bar of Wisconsin and the recipients of the funds. See S. Ct. Order 13-11B, 2019 WI 52 (issued May 16, 2019, eff. July 1, 2019); S. Ct. Order 13-11D, 2021 WI 40 (issued May 4, 2021, eff. June 1, 2021).

(c) A court in this state may allow a nonresident military counsel to appear and participate in a particular action or proceeding representing military personnel without being in association with an active member of the state bar of Wisconsin and without being subject to any application fees required by this rule.

(cm) A court in this state may allow a nonresident attorney who seeks to appear for the limited purpose of participating in a child custody proceeding pursuant to the Indian Child Welfare Act of 1978, 25 U.S.C. s. 1901, et seq., while representing a tribe, without being in association with an active member of the state bar of Wisconsin and without being subject to any application fees required by this rule.

(d) If representing a party before an agency of this state is limited to lawyers, an administrative law judge or hearing examiner for a state agency may, using the same standards and procedures as a court, allow a nonresident counsel who has been retained to appear in a particular agency proceeding to appear and participate in that proceeding without being in association with an active member of the state bar of Wisconsin.

(e) A court or judge may, after hearing, rescind permission for a nonresident counsel to appear before it if the lawyer by his or her conduct manifests incompetency to represent a client in a Wisconsin court or unwillingness to abide by the rules of professional conduct for attorneys or the rules of decorum of the court.

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(f) Counsel not admitted to the practice of law in this jurisdiction but admitted in any other U.S. jurisdiction or foreign jurisdiction, who is employed as a lawyer in Wisconsin on a continuing basis and employed exclusively by a corporation, association, or other nongovernmental entity, the business of which is lawful and consists of activities other than the practice of law or the provision of legal services, shall register as in-house counsel within 60 days after the commencement of employment as a lawyer or if currently so employed then within 90 days of the effective date of this rule, by submitting to the Board of Bar Examiners the following:

1. A completed application in the form set forth in Appendix B to this rule;
2. A nonrefundable fee of two hundred and fifty dollars (\$250) to the Board of Bar Examiners;
3. Documents proving admission to practice law in the primary jurisdiction in which counsel is admitted to practice law; and
4. An affidavit from an officer, director, or general counsel of the employing entity attesting to the lawyer's employment by the entity and the capacity in which the lawyer is so employed. A lawyer registered under this subsection may provide pro bono legal services without fee or expectation of fee as provided in SCR 20:6.1.

Wisconsin Comment

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A registered in-house lawyer is authorized to provide legal services to the entity, client, or its organizational affiliates, including entities that control, are controlled by, or are under the common control with the employer, and for employees, officers, and directors of such entities, but only on matters directly related to their work for the entity and only to the extent consistent with SCR 20:1.7. Counsel who provide legal services in this jurisdiction under SCR 20:5.5(d)(1) that desire to appear, either in person, by signing pleadings, or by being designated as counsel in actions filed in courts, administrative agencies, or other tribunals in this state, must file a separate motion for pro hac vice admission.

Wisconsin Comment

SCR 60.01(8) defines "judge" as "a justice of the supreme court, a judge of the court of appeals, a judge of the circuit court, a reserve judge, a municipal judge, a court commissioner, and anyone, whether or not a lawyer, who is an officer of the judicial system and who performs judicial functions."

(5) Membership dues and reduction of dues for certain activities. (a) The annual membership dues for state bar operations for an active member shall be established as provided herein. Other classes of members shall pay the fraction of the dues of an active member as follows: Supreme Court Justices, the full amount; judicial members, two-thirds; senior active members, one-half effective in the year the member attains the age of 75; inactive members, one-half; emeritus members, none; and members admitted to practice for 3 years or less, one-half. For purposes of

determining an active member's dues status based on the number of years admitted, there shall be no proration based on the exact month and year of admission. A fiscal year for which any dues are required to be paid under Bylaw 1, Section 2 shall count as a full year and a fiscal year for which no dues payment is required shall not count as a year. A change in the dues of an active member for state bar operations may be made by the board of governors or as set forth herein. The state bar shall include in the dues statement each year the amount necessary to pay the costs of the office of lawyer regulation, the continuing legal education functions of the board of bar examiners, as approved the Wisconsin lawyers' fund for client protection, and such other fees as ordered by the supreme court. Judicial members other than Supreme Court Justices are not liable to pay the portion for the costs of the office of lawyer regulation and the board of bar examiners. The state bar shall also include in the dues statement each year an assessment to support the public interest legal services fund, as approved by the supreme court. The state bar shall show separately on its annual dues statement the portion of the total dues for state bar operations, and each of the charges and assessments referred to above.

(b)1. The state bar may engage in and fund any activity that is reasonably intended for the purposes of the association set forth in SCR 10.02(2). The state bar may not use the compulsory dues of any member who objects pursuant to SCR 10.03(5)(b)3. for activities that are not necessarily or reasonably related to the purposes of regulating the legal profession or improving the quality of legal services. Expenditures

that are not necessarily or reasonably related to the purposes of regulating the legal profession or improving the quality of legal services may be funded only with user fees or other sources of revenue.

2. Prior to the beginning of each fiscal year, the state bar shall publish written notice of the activities that can be supported by compulsory dues and the activities that cannot be supported by compulsory dues. The notice shall indicate the cost of each activity, including all appropriate indirect expense, and the amount of dues to be devoted to each activity. The notice shall set forth each member's pro rata portion, according to class of membership, of the dues to be devoted to activities that cannot be supported by compulsory dues. The notice shall be sent to every member of the state bar together with the annual dues statement. A member of the state bar may withhold the pro rata portion of dues budgeted for activities that cannot be supported by compulsory dues.

3. A member of the state bar who contends that the state bar incorrectly set the amount of dues that can be withheld may deliver to the state bar a written demand for arbitration. Any such demand shall be delivered within 30 days of receipt of the member's dues statement.

4. If one or more timely demands for arbitration are delivered, the state bar shall promptly submit the matter to arbitration before an impartial arbitrator. All such demands for arbitration shall be consolidated for hearing. No later than 7 calendar days before the hearing, any member requesting arbitration shall file with the arbitrator a statement specifying with

reasonable particularity each activity he or she believes should not be supported by compulsory dues under this paragraph and the reasons for the objection. The costs of the arbitration shall be paid by the state bar.

5. In the event the decision of the arbitrator results in an increased pro rata reduction of dues for members who have delivered timely demands for arbitration for a fiscal year, the state bar shall offer such increased pro rata reduction to members first admitted to the state bar during that fiscal year and after the date of the arbitrator's decision.

(6) Penalty for nonpayment of dues. If the annual dues or assessments of any member remain unpaid 120 days after the payment is due, the membership of the member may be suspended in the manner provided in the bylaws; and no person whose membership is so suspended for nonpayment of dues or assessments may practice law during the period of the suspension.

(6m) Petition for reinstatement from suspension for nonpayment of dues or failure to file a trust account certificate. (a) An attorney whose suspension for nonpayment of annual membership dues for state bar operations or assessments imposed by the supreme court has been for a period of less than 3 consecutive years shall be reinstated as a member if he or she makes full payment of the amount owing and an additional payment of \$20 as a reinstatement fee plus any penalties imposed by the state bar. The state bar shall certify the reinstatement to the clerk of the supreme court.

Wisconsin Comment

Costs regarding the petition for reinstatement under subsection (6m) (b) may be assessed against the petitioner, as provided in SCR 22.24.

(b) An attorney whose suspension for nonpayment of annual membership dues for state bar operations or assessments imposed by the supreme court has been for a period of 3 or more consecutive years may file a petition for reinstatement with the supreme court. A copy of the petition shall be served on the board of bar examiners and the office of lawyer regulation. Separate payments in the amount of \$200 each shall be made to the board of bar examiners and the office of lawyer regulation and shall accompany the petition. Within 90 days after service of the petition for reinstatement, the board of bar examiners shall make a determination regarding compliance and file its finding with the supreme court. Within 90 days after service of the petition for reinstatement, the office of lawyer regulation shall investigate the eligibility of the petitioner for reinstatement and file a response with the supreme court in support of or in opposition to the petition. Following receipt of the determination by the board of bar examiners and the response of the office of lawyer regulation, the supreme court shall consider and grant or deny the petition for reinstatement.

(c) An attorney suspended from the practice of law for failure to comply with the trust account certification requirement under SCR 20:1.15 (g) shall be reinstated as a member by the state bar if he or she files

the prescribed certificate. The state bar shall certify the reinstatement to the clerk of the supreme court.

(7) (a) Voluntary resignation of membership. If a member of the state bar files with the state bar a written notice of the member's surrender of his or her license to practice law and the acceptance by the supreme court of his or her resignation in the state bar, the person shall then cease to be a member of the state bar and his or her name shall be removed from the membership register. Before accepting a resignation, the supreme court shall request from the office of lawyer regulation information concerning whether the attorney is the subject of any pending grievances, investigations, or proceedings.

(b) 1. An attorney who has resigned as a member of the state bar may be readmitted to the state bar with approval of the supreme court as provided in subd. 2.

2. The attorney shall file an original petition for readmission to the state bar with the clerk of the supreme court and shall file copies of the petition with the board of bar examiners and the office of lawyer regulation. The member shall pay \$200 each to the board of bar examiners and the office of lawyer regulation which payment shall accompany the copy of the petition. Within 90 days after receipt of the copy of the petition for readmission, the board of bar examiners shall make a determination regarding the eligibility of the petitioner for readmission and file its finding with the clerk of the supreme court. Within 90 days after receipt of the copy of the petition for readmission, the office of lawyer regulation shall inves-

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tigate the eligibility of the petitioner for readmission and file a response with the clerk of the supreme court in support of or in opposition to the petition. Following receipt of the determination by the board of bar examiners and the response of the office of lawyer regulation, the supreme court shall consider and grant or deny the petition for readmission.

Wisconsin Comment

Costs regarding the petition for readmission under subsection (7) (b) may be assessed against the petitioner, as provided in SCR 22.24.

Wisconsin Comment

Information regarding continuing legal education requirements is set forth in SCR ch. 31. See also CLE 3.015. The standards the OLR uses to investigate a requestor's eligibility for reinstatement are described in *In re Reinstatement of Polk*, 2007 WI 51, ¶10, 300 Wis. 2d 280, 732 N.W.2d 419 (explaining that "investigation of eligibility for reinstatement . . . is akin to the review conducted by the BBE during an initial application for a license to practice law in this state" such that the applicant must demonstrate that he or she has good moral character and the fitness to practice law). See also SCR 40.06(1) and (3) and Rule BA 6.01-6.02.

(8) Avoidance of hardship. The state bar may, in any case in which to do otherwise would result in hardship or injustice, permit the retroactive enrollment of members and waive penalties prescribed for delinquency in the payment of membership dues.

SCR 10.04 Officers. (1) Titles; Nomination and Election. The officers of the state bar include a president, a president-elect, an immediate past-president, a chairperson of the board of governors, a secretary and a treasurer, who shall be nominated and elected in the manner provided by the bylaws. Only active members of the state bar residing and practicing law in Wisconsin are eligible to serve as president or president-elect of the association. The term of office of the president, president-elect, immediate past-president and chairperson of the board of governors is one year. The term of the secretary and the treasurer is 2 years, with the secretary elected in even-numbered years and the treasurer elected in odd-numbered years. The term of each officer runs until the qualification of a successor.

(2) Duties of officers. (a) President. The president is the chief executive officer of the association. He or she shall be a member-at-large of the board of governors and shall preside at all meetings and assemblies of the association and the executive committee. He or she shall make the appointments to and designate the chairperson of all standing committees, create and appoint special committees, and be a member, ex officio, of every committee.

(b) President-elect and past president. The president-elect and immediate past-president shall each be a member-at-large of the board of governors and the executive committee and shall perform all other duties assigned to them by the president or board of governors or under these rules or the bylaws. At the expiration of the one-year term of office of the presi-

dent, the president-elect shall succeed to the office of president and the president shall succeed to the office of immediate past-president.

(c) Chairperson, board of governors. The chairperson of the board of governors shall be elected from the board membership by its members and shall be a member-at-large of the board of governors after his or her election. The chairperson shall be a member of the executive committee ex officio and shall preside at all meetings of the board of governors.

(d) Secretary. The secretary shall be a member-at-large of the board of governors. The secretary shall confer with and generally supervise the executive director and the administrative staff of the state bar as to the keeping of proper minutes and records, the maintenance of correct membership files and mailing lists and the general operation of the headquarters office and he or she shall make recommendations thereon to the board of governors as required.

(e) Treasurer. The treasurer shall be a member-at-large of the board of governors. The treasurer shall confer with and generally supervise the executive director and administrative staff of the state bar as to the methods and procedures used in the receipt, collection and safekeeping of all funds of the state bar and the procedures for disbursement and audit of the funds. The treasurer shall assist the executive committee in preparing the annual budget and in presenting it to the board of governors and shall make recommendations to the board of governors as to the association's financial affairs, as required.

(3) Compensation. The officers of the association shall receive no compensation for their services, but shall receive reimbursement of their expenses as authorized and directed by the board of governors.

(3m) Term of Office. The office of president and chairperson of the board of governors shall be for one term only. The offices of secretary and treasurer may be held for more than one term.

SCR 10.05 Board of governors. (1) Composition of board. The affairs of the association shall be managed and directed by a board of governors consisting of the 6 officers of the association, all of whom shall be ex officio members-at-large of the board, not fewer than 34 members elected from the state bar districts established under sub. (2), one member selected by the young lawyers division pursuant to its bylaws, one member selected by the government lawyers division pursuant to its bylaws, five governors selected by the nonresident lawyers division pursuant to its bylaws, one governor selected by the senior lawyers division pursuant to its bylaws, and three nonlawyers appointed by the supreme court for staggered two-year terms. No person appointed by the supreme court shall serve more than two consecutive full terms. The rights and powers of the ex officio members of the board are the same as those of elected members. All past-presidents of the Wisconsin bar association or of the state bar of Wisconsin, the Wisconsin state delegate to the American Bar Association house of delegates and the deans of the Marquette university and university of Wisconsin law schools are entitled to floor privileges, but without voting privileges.

(2) State bar districts. (a) For the purpose of conducting elections of the members of the board of governors, the board of governors shall divide the state into 16 state bar districts comprising specified counties and shall establish the number of members of the board of governors to be elected from each district.

(b) The number of members of the board of governors elected from each state bar district shall be in proportion to the number of active members entitled to vote residing in the district and shall take into consideration all of the following:

1. The composition of the judicial administrative districts established by sec. 757.60, Stats.
2. The geographical area of each state bar district.
3. All existing multi-county bar associations.
4. The representation of members in each state bar district afforded by members of the board of governors selected by divisions of the association under sub. (1).

(c) Every 10 years, commencing January 1, 1995, the board of governors shall submit to the court a proposed redistricting map dividing the state bar into districts in accordance with the requirements in par. (b).

(d) Notice, filing, review, hearing and adoption of a redistricting proposal submitted under par. (c) shall

be provided in SCR 10.13(2) for amendment of by-laws.

(3) Term; qualifications; nomination and election. The term of office of each elected member of the board of governors is 2 years, commencing on July 1 next following his or her election. No person is eligible to vote in a district for governor or to serve on the board of governors from a district unless he or she is an active member of the association and maintains in the district his or her principal office for the practice of law. No person is eligible for election to the board of governors for more than 2 consecutive terms. The eligibility of any person to serve as a member of the board of governors from any state bar district ceases upon removal of the person's principal office for the practice of law from the district. Nominations and elections of members of the board of governors shall be conducted in accordance with the provisions of the bylaws.

(4) Functions. (a) The board of governors has general charge of the affairs and activities of the association. It may:

1. Fix the time and place of the annual meeting of members of the association.
2. Make appropriations and authorize disbursements from the funds of the state bar in payment of the necessary expenses of the association.
3. Engage and define the duties of employees and fix their compensation.

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4. Receive, consider and take action on reports and recommendations submitted by committees, sections and the assembly of members of the association at any annual or special meeting.

5. Arrange for publication of official state bar publications.

6. Conduct investigations of matters affecting the association or the practice of law or the discipline of members of the association.

7. Fill vacancies arising in the membership of the board of governors or in any office except the office of president. In each case the person appointed to fill the vacancy shall hold office for the unexpired term.

8. Adopt bylaws and regulations, not inconsistent with this chapter, for the orderly administration of the association's affairs and activities.

(b) The board of governors shall meet at least 4 times each year. Twenty-four members present at any meeting constitutes a quorum. Special meetings of the board of governors may be called in accordance with the bylaws.

(c) The board of governors shall establish and maintain standing committees having respectively the functions defined in the bylaws. The board of governors may create additional standing committees and special committees and may define the authority and functions of those standing and special committees.

(d) The board of governors shall establish and maintain sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. New sections may be established and existing sections may be consolidated or discontinued by the board of governors. Each section shall be governed by bylaws not inconsistent with this chapter or state bar bylaws. Section bylaws and amendments thereto become effective upon approval of the board of governors.

(e) A section may express a position on a matter involving a substantial issue of public policy under the following conditions:

1. The matter is one on which the section's views would have particular relevance.
2. The position is adopted in accordance with section bylaws.
3. The position is clearly taken only on behalf of the section.
4. The section charges annual dues at least equal to the cost of its legislative program so that the cost need not be borne by section nonmembers. The executive committee or board shall receive a summary of section positions on matters involving substantial issues of public policy prior to their publication but inaction by the executive committee or board shall not be construed as support of such positions. No commit-

tee of the association may publicly express any conclusion or opinion respecting any substantial issue of public policy without having procured previous authorization from either the board of governors or the executive committee of the association. This prohibition is not applicable to the public release of reports made by committees to the board of governors prior to action thereon by the board, unless the board has otherwise ordered. If any committee or section of the association expresses publicly any conclusion or opinion on matters other than substantial issues of public policy, the expression shall indicate that the conclusion or opinion is that of the section of committee from which it emanates, rather than the conclusion or opinion of the state bar.

(f) The members of the board of governors shall receive no compensation for services to the association, but they and also the members of committees and the officers and directors of sections and of the young lawyers division, the government lawyers division, the nonresident lawyers division, and the senior lawyers division may be reimbursed for necessary expenses in the performance of their duties.

(g) A summary of the minutes of each meeting of the board of governors shall be provided to the membership in an official state bar publication, with a notation that any interested member may obtain a copy of the minutes.

(h) The board of governors shall establish and maintain a young lawyers division. Membership in the division shall be voluntary. Those eligible for membership in the young lawyers division shall be

any member of the state bar under the age of 36 years or any member, irrespective of age, during the first 5 years following admission to the bar. This division shall be governed by bylaws not inconsistent with state bar rules and bylaws. The division bylaws and amendments thereto become effective upon approval of the board of governors. The young lawyers division shall stimulate the interest of young lawyers in the objectives and programs of the state bar and carry on projects which will be of assistance to young lawyers.

(i) The board of governors shall establish and maintain a government lawyers division. Membership in the division shall be voluntary. Those eligible for membership in the government lawyers division shall be any member of the state bar who is a salaried employee of any government. This division shall be governed by bylaws not inconsistent with state bar rules and bylaws. The division bylaws and amendments thereto become effective upon approval of the board of governors. The government lawyers division shall promote effective collaboration between the private and public sectors of the bar and provide for the participation of publicly employed members in the governance of the state bar.

(j) The board of governors shall establish and maintain a non-resident lawyers division. Membership in the division shall be voluntary. Those eligible for membership in the non-resident lawyers division shall be any member of the state bar who has an address of record outside the state of Wisconsin. This division shall be governed by bylaws not inconsistent with state bar rules and bylaws. The division bylaws

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and amendments thereto become effective upon approval of the board of governors. The non-resident lawyers division shall carry on projects which will be of assistance to members outside the state of Wisconsin and provide for the participation of members outside Wisconsin in the governance of the state bar.

(k) The board of governors shall establish and maintain a senior lawyers division. Membership in the division shall be voluntary. Those eligible for membership in the senior lawyers division shall be any members of the state bar who are age 60 years or older. The division shall be governed by bylaws not inconsistent with state bar rules and bylaws. The division bylaws and amendments thereto become effective upon approval of the board of governors. The senior lawyers division shall carry on projects that will stimulate the interest of the senior lawyers in the objectives and programs of the state bar and carry on activities which will be of assistance to senior lawyers in the practice of law.

(m) 1. Establishment. The board of governors may provide assistance programs, including, but not limited to assistance for lawyers with questions regarding law office management; assistance for judges, lawyers, law students, and their families in coping with alcoholism and other addictions, mental illness, physical disability, and other problems related to or affecting the practice of law; and assistance for both lawyers and the public regarding lawyer referrals. The board may establish committees, hire staff, and obtain volunteers as reasonably necessary to provide assistance. The board shall establish policies consistent with the purposes of the state bar and in fur-

therance of the public interest in the competence and integrity of the legal profession.

2. Privileges, immunity. Communications with an assistance committee member, staff, or volunteers by any person providing information in good faith are privileged; no lawsuit based upon these communications may be instituted by any person. In providing assistance services, the board, members of assistance committees, staff, and volunteers designated by the board shall be immune from suit for any conduct in the course of their official duties.

3. Confidentiality. All communications with an assistance committee member, staff, or volunteer, and all records of program assistance to a person are confidential and shall not be disclosed, except in any of the following circumstances:

a. With the express consent of the person provided assistance.

b. When required as a condition for monitoring.

c. When reasonably necessary to prevent death or substantial bodily harm to the person assisted or to another.

d. When reasonably necessary to prevent child abuse or elder abuse.

e. When reporting is mandated by other law.

SCR 10.06 Executive committee. (1) Members; selection. The executive committee consists of the

president, the president-elect, the immediate past-president, the chairperson of the board of governors, one representative each from the nonresident lawyers division, government lawyers division, young lawyers division, and senior lawyers division selected from their board of governors representatives and 6 additional members elected annually by the board of governors at its final meeting of the fiscal year. The 6 additional members shall be elected from among the governors-elect and the current governors who will serve on the board of governors during the following fiscal year. A vacancy occurring in the selected membership may be filled by action of the board of governors.

(2) Powers. The executive committee may exercise all the powers and perform all the duties of the board of governors between the meetings of the board except the executive committee shall not, unless otherwise authorized by the board of governors: amend the bylaws; make rules or regulations governing nominations or elections; prescribe regulations for proceedings before grievance committees; or initiate the taking of any referendum or poll of members of the association. The executive committee shall directly receive and act upon all reports of committees on disciplinary matters without reporting to the board of governors. The minutes relating to disciplinary matters shall be kept separate from the general minutes and shall be confidential. The executive committee shall prepare an annual budget for submission to the board of governors and shall perform such other duties as the board of governors may prescribe. Unless otherwise ordered by the board of governors, the executive committee shall not express publicly any

opinion on any matter including legislation of major public interest or concern or of major importance to the members of the association. A summary of the general minutes of each meeting of the executive committee shall be provided to the membership in an official state bar publication.

(3) Meeting; quorum. The executive committee shall meet at the call of the president, or at the call of the executive director upon the written demand of at least 6 of its members. All members shall be given at least 48 hours' notice by mail or telephone of the time and place of any meeting. A majority of all members constitutes a quorum. No action may be taken by the committee except upon the concurrence of at least a majority of all members. The concurrence may be registered by mail, telephone, facsimile, or e-mail.

SCR 10.07 Meetings of the association. (1)

Annual meeting. There shall be an annual meeting of the members of the state bar each year. The board of governors shall determine the time and place of the annual meeting and shall arrange a suitable program.

(2) Assembly of members. An assembly of the members of the state bar may be held at each annual meeting for the purpose of discussing any issues of association public policy.

SCR 10.08 Referendum procedure. (1) Time of holding. All referendums shall be conducted in any calendar year at the same time as and simultaneous with the election of officers and members of the board of governors of the state bar.

(2) Time for filing request. In order to be submitted to the membership in the regularly scheduled spring elections, petitions for referendum initiated by members of the state bar must be filed at the state bar headquarters no later than the first business day in January. Nothing in this rule is intended to prohibit the submission of referendum petitions at any time in the preceding calendar year after the completion of state bar elections for that year. Any referendum authorized by the board of governors shall be authorized on or before February 28 of the calendar year in which the referendum is to be held.

(3) Subject matter of referendum. (a) A referendum may inquire as to the opinion of members on any matter of public policy which is properly the subject of any action by the association, including proposals for change in the rules or bylaws of the association, except no referendum may be held on administrative or personnel matters and expenses or retroactively on dues.

(b) The same substantive question shall not be submitted to the members by referendum more frequently than one time in two calendar years.

(4) Governors may initiate. The board of governors may, by the affirmative vote of two-thirds of its membership, refer to the active members of the association for determination by ballot any appropriate question of public policy, as provided in sub. (3).

(5) Members may initiate by petition. When required by petition as set forth herein, the board of

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governors shall submit for determination by the members of the association any question appropriate for referendum, as provided in sub. (3).

(a) The petition shall succinctly and clearly state the question to be submitted by referendum.

(b) A referendum must be requested by petitions containing the signatures of 1,000 members of the state bar eligible to vote.

(c) Each petition shall contain (i) the member's signature and full name clearly printed or typed, (ii) the address of the member's principal office for the practice of law and (iii) the date on which the petition was signed.

(d) Each petition shall be circulated by an active member in good standing of the state bar.

(e) The petitions shall be verified by the circulator who shall swear that the circulator personally obtained all signatures set forth on the petition and knows them to be members of the state bar as represented therein.

(f) The 1,000 signatures required shall include not less than 50 signatures from each of six separate districts from which members of the state bar board of governors are elected.

(g) All signatures must be obtained within a period of ninety days before the date the petition is filed.

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(h) The petition shall designate the person to be notified of any insufficiency or improper form under sub. (7).

(j) Members can obtain a petition form from the executive director.

(k) Non-resident members are considered to reside in a single, non-resident district.

(6) Procedure for filing petition.

(a) The petition must be complete when filed with the state bar headquarters. Upon filing, the petition shall be examined by the state bar executive director or his or her designee in order to determine all of the following:

1. Whether the question is properly the subject of a referendum.

2. Whether the signatures are of members of the state bar who are eligible to vote.

3. Whether the signatures satisfy the geographic distribution and time requirements set forth in sub. (5)(f) and (g).

4. Whether the petition is otherwise in order as required by this section.

(b) The ruling of the executive director shall be communicated to the person designated in the petition as soon as practicable and within 2 weeks after the date on which the petition is filed.

(7) Framing the question. Upon receipt by the state bar of a referendum petition as described above and certification by the executive director as to the validity of the petition, the state bar president shall appoint a committee to frame the exact question to be submitted to the members. That committee shall include the person designated in the petition. The committee shall be responsible for framing the question in a form that is clear, intelligible and meaningful.

(8) Final certification by board of governors. Any dispute as to the certification of the validity of the petition by the executive director, or the framing of the question by the special committee described above, shall be submitted to the board of governors who shall determine the validity of the petition and the form in which the question shall appear on the referendum ballot.

(9) Publication of question. As to all questions to be submitted to the members by referendum, space in a reasonable amount shall be provided to both the proponents and the opponents of the proposition. This space shall be made available without charge in the state bar's official publication one month prior to distribution of the referendum ballots or in another state bar distribution to all eligible voters. State bar mailing lists shall be equally available at the same costs to both proponents and opponents of any referendum.

(10) Conduct of election. The distribution of the ballots, the return of the ballots, the counting of the

ballots and the reporting of the results shall be conducted in the same manner as set forth in article 3, sections 4 through 8 of the bylaws for the election of the board of governors.

(11) Binding effect. A referendum receiving an affirmative vote of a majority of the votes cast, provided that at least 25% of the eligible voters vote, shall establish state bar policy until such time as that policy may be changed or modified according to the requirements of supreme court rules or state bar bylaws.

SCR 10.09 Disbursements. (1) The board of governors shall make necessary appropriations for disbursements from the funds in the treasury to pay all necessary expenses of the association, its officers and committees. It shall be the duty of the board of governors to cause proper books of account to be kept and to procure an annual audit thereof by a certified public accountant.

(2) A financial statement showing assets, liabilities, receipts and disbursements of the state bar shall be provided annually to the membership in an official state bar publication. A copy of the annual audit shall be filed with the supreme court.

SCR 10.10 Committee to review bar performance. The supreme court shall appoint a committee to review the performance of the state bar in carrying out its public functions at such time as the court deems it advisable. The supreme court shall determine in its order of appointment the size and compo-

sition of the committee. The state bar shall pay the expenses of the committee.

SCR 10.11 Executive director. There shall be an executive director of the state bar who is the chief executive officer of the administrative staff and in direct charge of the state bar office, its records, property and equipment. The executive director shall be hired by the board of governors under terms of employment and compensation fixed by the board. The executive director shall devote full time to the affairs of the state bar. Subject to the general control of the officers, executive committee and board of governors and as appropriate and consistent with the requirements of these rules and the bylaws, the executive director shall:

(1) Attend meetings of the executive committee and board of governors and keep and disseminate the minutes of the meetings.

(2) Collect, deposit and disburse the association's funds pursuant to the budget and shall invest surplus funds at the direction of the executive committee.

(3) Maintain membership lists and individual member files.

(4) Advise and assist the officers, governors, sections and committees.

(5) Make the arrangements for association meetings.

(6) Perform other duties as directed by the board of governors or officers or as prescribed by this chapter or the bylaws.

SCR 10.12 Official publication; notice to members. (1) Official Publication. The Wisconsin Lawyer magazine or its successor is the official print publication of the state bar of Wisconsin. The state bar may designate electronic media as official publications for the purpose of providing notices to members.

(2) Notice to Members. The state bar shall publish notices required by supreme court rules or state bar rules and bylaws. Such publication shall constitute official notice to state bar members.

(3) Publication Plan. The state bar board of governors shall approve a plan for how the state bar will publish notices to members required by the supreme court rules or state bar rules or bylaws. That plan will be published in the Wisconsin Lawyer or its successor and on the state bar's website. The state bar will provide notice to members whenever the plan is amended.

SCR 10.13 Amendment.

(1) Amendment of rules. Proposals for amendment or abrogation of provisions of this chapter may be presented to the supreme court by petition of the board of governors or by petition approved by the members of the association through the referendum procedure set forth in SCR 10.08. Hearing upon such

a petition will be pursuant to notice in such manner as the court directs.

(2) Amendment of bylaws. The provisions of the bylaws of the state bar of Wisconsin are subject to amendment or abrogation by resolution adopted by vote of two-thirds of the members of the board of governors, or action of the members of the association expressed through the referendum procedure defined in SCR 10.08. When any change in the bylaws has been made by the board of governors the executive director shall publish notice of the change, including a copy of the amendatory resolution, in an official state bar publication pursuant to SCR 10.12 and shall file a certified copy thereof with the clerk of the supreme court. A petition for review of any such change in the bylaws will be entertained by the court if signed by 25 or more active members of the association and filed with the clerk of the court within 60 days after publication of notice of the change. Hearing upon such a petition will be pursuant to notice in such manner as the court directs.

SCR 10.14 [Deleted.]

Amended November 11, 1980; June 1, 1983; January 21, 1986; February 21, 1986; October 21, 1987; April 11, 1989; January 22, 1990; November 6, 1990, March 13, 1992; May 7, 1992; April 14, 1993; March 21, 1995; April 12, 1996; October 30, 1998; November 14, 2001; February 12, 2008; January 1, 2009; July 1, 2010; January 1, 2012; January 1, 2014; July 1, 2014; July 3, 2014; March 6, 2015; May 16, 2019; June 12, 2019; December 10, 2019; June 30, 2020; March 2, 2021; May 4, 2021; September 7, 2021; April 26, 2022.

APPENDIX

State Bar By-Laws

Article I Membership

Section 1. Membership Register. The Association shall maintain a membership register for the enrollment of members of the State Bar, which shall contain as to each member a record showing the member's address, date of registration, class of original membership and each subsequent change of membership status, and such other information as may be required by the Board of Governors from time to time. Every member shall enroll in the State Bar by filing in the office of the Association the following information concerning the registrant:

- (a) Full name.
- (b) Residence address.
- (c) Office address. Location of principal office.
- (d) Date of admission to practice in Wisconsin.
- (e) Date of admission to practice in any state or states other than Wisconsin.
- (f) Date and place of birth; and in the case of a naturalized person, the date and place of naturalization.

(g) Particulars regarding any previous suspension or revocation of right to practice law in any state or country.

(h) Name of law school and year of graduation.

(i) Social security number.

Every change after enrollment in respect of any of the matters above specified shall be promptly reported to the Executive Director. Communications from the Association to any member shall be sent to the latest address furnished by such member. At the time of enrollment of each member admitted to practice after these rules take effect, the Association shall deliver to the new member a copy of the lawyer's oath set forth in sec. 757.29, Wisconsin Statutes.

Section 2. Membership Dues. Membership dues shall be paid on the basis of a July 1 through June 30 fiscal year and shall be due and payable to the treasurer on July 1 beginning each such year. Membership dues for the fiscal year in which admission to the State Bar occurs shall be paid by the due date stated on an initial dues statement as follows: (i) for those admitted between July 1 and December 31, full applicable annual dues; (ii) for those admitted between January 1 and April 30, one-half applicable annual dues; (iii) for those admitted between May 1 and June 30, no dues. The Board of Governors may exempt any member serving in the armed forces of the United States at the date of admission or at the beginning of any fiscal year, provided satisfactory proof of exemption is submitted to the Executive Director within 60 days of the date dues otherwise would be payable.

The Board of Governors shall exempt any newly admitted member who qualifies for an exemption under Wis. Stat. 45.44(3) from their initial dues upon certification of eligibility from the Board of Bar Examiners. For those admitted between May 1 and June 30, the waiver will apply to the first dues owed for the fiscal year following admission.

Section 3. Penalty for Nonpayment of Dues. (a)

Any member admitted to the State Bar prior to July 1 whose dues are not paid by September 1 shall be notified of his or her delinquency and the consequent penalties by certified mail sent to the member's last known address prior to October. Failure to pay the dues by October 31 shall automatically suspend the delinquent member. The names of all members suspended from membership by the nonpayment of dues shall be certified by the Executive Director to the Clerk of the Supreme Court and to each judge of a court of record in this state, after first mailing a copy of such list to each suspended member 10 days before it is filed with the Supreme Court.

(b) Any member admitted to the State Bar on or after July 1 and whose dues are not paid within 60 days after the due date stated on his or her initial dues statement shall be notified of his or her delinquency and the consequent penalties by certified mail sent to the member's last known address within 90 days after the initial due date. Failure to pay initial dues within 120 days from the initial due date shall automatically suspend the delinquent member, and the Executive Director shall certify such suspension in the manner provided by these bylaws.

(c) Whenever a member so suspended for non-payment of membership dues makes full payment of the amount owing, and in addition thereto the sum of twenty dollars as a penalty, the member shall be reinstated as a member by the Board of Governors, and the fact of reinstatement shall be certified by the Secretary to the Clerk of the Supreme Court. Provided however in the case of any person whose membership dues shall have been in arrears for a period of three or more consecutive years, no application for reinstatement shall be granted unless ordered by the court. Provided further however, that no person whose membership is suspended for the nonpayment of dues shall be entitled to practice law during the period of such suspension.

Section 4. Hardship Cases. The Executive Director, with the approval of the President, may in individual cases waive or refund dues or penalties in any case where to do otherwise would work an injustice or an undue hardship. All such waivers or refunds shall be reported to the Board of Governors.

Section 5. Dues Reduction Arbitration Procedure.
(a) Demands for arbitration of the dues reduction under SCR 10.03(5)(b) shall be made in writing and shall be delivered to the Executive Director of the State Bar within 30 days of receipt of the member's dues statement. Delivery may be made in person or by first class mail, and mailed demands will be deemed delivered upon mailing. Demands shall include the name and address of the member or members demanding arbitration, a brief statement of the claim or objection, and the signature of the member or members.

(b) If one or more timely demands for arbitration are delivered, the State Bar shall agree to submit the matter forthwith to arbitration. All timely demands for arbitration shall be consolidated for hearing before the arbitrator appointed, and the provisions of sec. 788, Stats., shall apply as if the parties had entered into a written agreement for arbitration¹. A member demanding arbitration is required to pay his or her dues by October 31 or 15 days following the arbitrator's decision, whichever is later. Failure to pay dues by such date shall automatically suspend the delinquent member.

(c) Upon receipt of all demands for arbitration, the State Bar shall apply for appointment of an impartial arbitrator to the Chief Judge of the Federal District Court for the Western District of Wisconsin.

(d) Members demanding arbitration shall have access to the financial records upon which the State Bar based the determination of the amount of dues that can be withheld. These records shall be available for inspection and copying during normal business hours. Copying shall be at the member's expense.

(e) The arbitrator shall determine the date, time and location of the arbitration hearing(s) or the briefing schedule, as the case may be, and shall so notify the parties at least 15 days prior to said hearing(s) or the deadline for the filing of the opening brief. The arbitrator will promptly hold hearings in which the parties will be permitted to participate personally or through a representative, unless the parties agree that the matter may be decided on briefs. The State

Bar shall bear the burden of proof regarding the accuracy of the determination of the amount of dues that can be withheld. All parties will be given the opportunity to present evidence and to present arguments in support of their positions. The arbitrator shall not be deemed a necessary party in judicial proceedings relating to the arbitration. The arbitrator shall have no authority to add, subtract, set aside or delete from any Supreme Court Rules, or State Bar bylaw. Unless otherwise agreed by the parties, the following rules shall apply to the arbitration proceedings:

- i. There will be no transcripts or post-hearing briefs.
 - ii. The arbitrator will issue an award stating the reasons for the decision within 30 business days of the closing of the hearing. The opinion will be brief, and based on the evidence and arguments presented.
 - iii. The arbitrator will charge a reasonable hourly fee for services, including the hearing, preparation and study time, and shall be reimbursed for all necessary expenses of the arbitration.
 - iv. The hearing(s) or the briefing schedule, as the case may be, shall be completed within 60 days of appointment of the arbitrator.
- (f) Members first admitted to the State Bar after the date of notification to members shall be given that notification with their initial dues statements. Such members shall be further notified that they may deliver a demand for arbitration within 30 days fol-

lowing receipt of the notification. If arbitration is pending at the date of delivery of a demand for arbitration by a newly admitted member, the newly admitted member's demand shall be consolidated with the pending arbitration. All of the provisions of this section shall otherwise apply to demands for arbitration filed by newly admitted members.

1 "The arbitrator's decision would not receive preclusive effect in any subsequent section 1983 action." *Chicago Teachers Union v. Hudson*, 472 U.S. 292, 308 n. 21 (1986).

Article II Officers

Section 1. Nominations. The President-Elect, the Secretary and the Treasurer of the State Bar shall be elected from a list of candidates nominated in the following manner:

(a) The President of the Association with approval of the Board of Governors shall appoint a committee of five members to nominate candidates for said offices to be voted on at the next annual election. The nomination committee shall be approved at the first regularly scheduled Board meeting following the annual convention. The committee shall issue a report naming two or more nominees for the Office of President-Elect, two or more nominees for the Office of Secretary and two or more nominees for the Office of Treasurer. Before making its report, the committee shall solicit from the membership the names of members interested in seeking nomination to any office scheduled for election. The committee shall make its report no later than December 15 in each year.

(b) Other persons may be nominated for any of said offices by petition. Each nominee must provide a petition signed by not less than one hundred active members of the Association. The petition must be filed in the Office of the Executive Director on or before the first business day of February of the year of the election. Before such a petition may be filed, the nominee must consent in a written statement to nomination for the office designated in the petition.

Section 2. Voting and Canvass of Ballots. The provisions of Sections 4 to 8 inclusive of Article III of these By-Laws relating to the election of members of the Board of Governors shall be applicable also to the election of officers.

Section 3. Election of Chairperson of the Board of Governors. The Board shall elect a Chairperson of the Board of Governors from its members at its last regular meeting each fiscal year. The President-Elect shall appoint a nominating committee from the governors at the second to last regular Board meeting of the fiscal year. The committee shall nominate one or more candidates for this office. Those eligible for nomination and election to this office are: all current Board members, including members whose second terms expire that June, except for the President and President-Elect. While serving as Chairperson of the Board, the Chairperson of the Board shall be a governor at large and no longer a district governor.

Section 4. Commencement of Term of Office. The terms of all out-going officers of the Association and the Chairperson of the Board of Governors shall end,

and the term of their successors shall commence, on the first day of July.

Section 5. Vacancies. A vacancy is created by the death, incapacity, inability to serve, revocation, suspension, or relinquishment of law licensure, or resignation of an officer, or by removal of an office pursuant to section 7.

(a) President. If the office of President becomes vacant, the President-elect shall succeed to the office of President for the unexpired term of the President and shall serve a one-year term thereafter, if the President-elect was elected as President-elect at the previous annual election.

(b) President-elect. A vacancy in the office of President-elect shall be filled by a vote of a majority of the total membership of the Board of Governors. A President-elect so chosen shall succeed to the office of President only if necessary to fill a vacancy as provided for in this section and shall not serve an additional one-year term as President unless elected as such at the next annual election or at an earlier special election as the Board of Governors may require.

(c) Secretary. A vacancy in the office of Secretary shall be filled by a vote of a majority of the total membership of the Board of Governors. A Secretary so chosen shall not serve an additional term as Secretary unless elected as such at the next scheduled election for secretary, or at an earlier special election as the Board of Governors may require.

(d) Treasurer. A vacancy in the office of Treasurer shall be filled by a vote of a majority of the total membership of the Board of Governors. A Treasurer so chosen shall not serve an additional term as Treasurer unless elected as such at the next scheduled election for treasurer, or at an earlier special election as the Board of Governors may require.

Section 6. Temporary Vacancy. If an officer is temporarily unable to perform his or her duties, the Board may appoint a temporary replacement, who shall serve no longer than the remainder of the officer's unexpired term, or until the inability to serve or license status issue is resolved, whichever occurs first.

Section 7. Removal. An officer may be removed from office as follows: Revocation, Suspension or Relinquishment of Law License. If an officer's license to practice law is revoked or relinquished during his or her term, the officer shall immediately be removed from office, without further notice. If the officer's license to practice law is suspended for a term less than the time remaining on his or her term, the officer's position will be considered temporarily vacant.

Article III Board of Governors

Section 1. Qualifications of Electors. Each member of the Board of Governors shall be elected by the active members of the State Bar eligible to vote in the State Bar District in which such member of the Board of Governors has his or her principal office for the practice of law.

Section 2. Term. At the annual election members of the Board of Governors shall be elected in the several State Bar districts by the members entitled to vote in each Bar district where there is a vacancy or vacancies for governor or governors whose terms expire.

Section 3. Nomination Petitions. Nominations for the Office of Governor shall be by petition signed in respect of each nominee by not less than ten persons entitled to vote for such candidate. Blank forms for that purpose shall be supplied by the Executive Director of the Association on request. Nomination petitions for candidates to be voted on at the annual election in any year shall be filed in the office of the Executive Director not later than the first business day of March of such year, provided that before the filing of such petition a statement shall be endorsed thereon by the nominee to the effect that the nominee consents to nomination for the office designated in the petition. No nominating petition for governor shall be filed on behalf of any member practicing in the same county in which another member is a governor whose term does not expire at the next annual meeting.

Section 4. Voting List. On the third Friday of March in each year the voting list shall close for the election in that year. Every active member of the Association in good standing on that date shall be entitled to vote in the State Bar District in which the member's principal office for the practice of law is located, for officers of the State Bar and for the governor or governors for such district to be elected that year.

Section 5. Distribution of Ballots. On or before the second Friday of April in each year the Executive Director or his designee shall prepare and distribute the required ballots to each active member of the State Bar entitled to vote at the annual election. Ballots may be distributed by electronic or regular mail. One form of ballot sent to persons entitled to vote in each State Bar District shall contain the names of the nominees for the several offices of the State Bar to be filled at the annual election. If any such person entitled to vote in such election fails to receive his or her ballots, or if it appears that any such ballot has been lost or destroyed, a new ballot shall be furnished to the person. Twelve noon on the fourth Friday of April in each year shall be the last day and time for voting in such election and no ballots received after that date and time shall be counted.

Section 6. Voting of Ballots. No ballot shall be counted unless returned on or before the last day and time for voting, in an envelope marked "Ballot" or in the manner designated by the electronic ballot provider.

Section 7. Checking and Custody of Ballots. The Executive Director or his designee shall receive and have custody of the ballots after they are voted until they are canvassed. All such ballots shall be segregated as to State Bar districts from which they are received and shall remain unopened until canvassed.

Section 8. Canvass of Ballots. The ballots shall be canvassed by an independent entity. The candidate receiving the highest number of votes for each office shall be declared elected. In case of a tie vote the Ex-

ecutive Committee shall determine the successful candidate by lot drawn by the Committee. The independent entity shall certify the results to the Executive Director, who shall forthwith notify the candidates and announce the results. Upon completion of the canvass, the independent entity shall be allowed to destroy all completed and blank ballots in the possession of the independent entity on or after August 1 unless notified otherwise by the further order of the Board of Governors.

Section 9. Vacancy. A vacancy is created by the death, incapacity, inability to serve, revocation, suspension, or relinquishment of law license, or resignation of a governor, or by removal of a governor pursuant to section 10.

(a) Governor. Any vacancy in the office of an elected governor shall be filled by the Board for the remainder of the unexpired term. Any member appointed to fill such a vacancy shall be eligible for election to two consecutive full terms as a governor. Any vacancy in the office of an appointed public member shall be filled by the Supreme Court. Any vacancy in the office of a division representative shall be filled in accordance with the bylaws of the division.

(b) Temporary Vacancy. If a governor is temporarily unable to perform his or her duties, the Board may appoint a temporary replacement, who shall serve no longer than the remainder of the governor's unexpired term, or until the inability to serve or license status issue is resolved, whichever occurs first. The replacement shall be a member whose principal office, or residence, if the member has no principal

office, is in the same district as that of the governor who is being temporarily replaced.

Section 10. Removal. A Governor may be removed from office as follows: Revocation, Suspension or Relinquishment of Law License. If a governor's license to practice law is revoked or relinquished during his or her term, he or she shall immediately be removed from the Board, without further notice. If the governor's license to practice law is suspended for a term less than the time remaining on his or her term, the Governor's position will be considered temporarily vacant.

Section 11. Meetings of Board of Governors. (a) There shall be a regular meeting of the Board of Governors in each year at the time of the annual meeting of members of the State Bar. There shall be at least three additional regular meetings in each year. The meetings shall be on the dates set by the President and announced no later than thirty days following the President's assumption of office on July 1. Special meetings of the Board of Governors may be held at any time upon call of the President, and shall be called by the President upon written request signed by seven members of the Board.

(b) Notice of the time and place of regular and special meetings of the Board shall be given to each member by the Executive Director by mail or telephone at least five days before the meeting. At any regular meeting of the Board any business may be transacted which is within the power of the Board, whether or not specified in the call or notice of the meeting. At any special meeting of the Board, any

business may be transacted which is within the power of the Board if specified in the call or notice of the meeting. Members of the Board may participate and vote by telephone at any special meeting, but not at a regular meeting. Members appearing by telephone at a special meeting shall be deemed present for the purpose of determining a quorum. Action by the Board may be taken by a majority of members present at a meeting at which a quorum is present, except action upon legislative proposals, proposed supreme court rule changes and proposed executive agency rule changes shall require approval by a 60% majority of members present at a meeting at which a quorum is present. At any regular or special meeting, any business placed on a consent agenda that is part of the notice or call will be acted upon without debate. Business listed on the consent agenda may be removed by any one governor within a 72-hour notice to the Secretary of the State Bar.

Section 12. Members of Judicial Council. Upon expiration of the term of office of each member of the Judicial Council selected by the Wisconsin Bar Association pursuant to the provisions of sec. 758.13, Wisconsin Statutes, the successor in such office shall be elected from the active members of the State Bar in the manner provided for the election of officers.

Section 13. American Bar Association Delegates.
(a) Upon expiration of the term of office of each State Bar delegate of the House of Delegates of the American Bar Association, the successor shall be elected by the Board of Governors and every vacancy thereafter occurring in such office shall be filled in the manner specified below.

(b) The election of delegates shall be held at the meeting of the Board of Governors held in conjunction with the annual meeting of the State Bar of Wisconsin each year.

(c) Qualification for election as State Bar of Wisconsin delegate to the American Bar Association House of Delegates shall be membership in the State Bar of Wisconsin and the American Bar Association and shall be made by petition of nomination to such office endorsed by at least ten members of the State Bar of Wisconsin Board of Governors, except that a candidate for Young Lawyer delegate who is otherwise qualified under section 6.4 of the American Bar Association Constitution shall be nominated by petition endorsed by at least four members of the Young Lawyers Division Board of Directors. Members of the State Bar of Wisconsin Board of Governors or, in the case of nomination of the Young Lawyer delegate, members of the Young Lawyers Division Board of Directors, may endorse any number of candidate petitions. Petitions for nomination shall be substantially in the form of petition for election to the State Bar of Wisconsin Board of Governors as prescribed in Article III, Section 3 of the State Bar of Wisconsin Bylaws with appropriate changes in order to make the petition germane to this purpose. Petitions for nominations shall be filed in the office of the Executive Director of the State Bar of Wisconsin no later than the 15th day of April in the year the election is to be held.

(d) Notice of election for terms of delegates expiring at the close of the American Bar Association Annual Meeting each year shall be substantially in the

form as the notice attached hereto as Exhibit A. Said notice shall be published in February in an official State Bar publication pursuant to SCR10.12.

(e) Commencing with delegates elected at the meeting of the Board of Governors held in conjunction with the 1994 Annual Meeting of the State Bar of Wisconsin, no candidate shall be elected to more than three consecutive terms.

Exhibit A

Notice of Election of State Bar of Wisconsin Delegates to the American Bar Association House of Delegates.

An election of two members or in odd numbered years, one member and one member of the Young Lawyers Division, of the State Bar of Wisconsin to the American Bar Association House of Delegates (House) will be held at the meeting of the Board of Governors on the ____ day of ____ 20 ____ . Those members interested in representing the State Bar of Wisconsin in such capacity are referred to Article III, Section 11 of the State Bar of Wisconsin Bylaws for qualifications for election and election procedure. Below is a brief description of the American Bar Association House of Delegates as well as the duties of said office.

The House has the ultimate responsibility for establishing Association policy, both as to the administration of the Association and its positions on professional and public issues. The House elects the officers of the Association and members of the Board of Gov-

ernors upon nomination of the Nominating Committee. The House has sole authority to amend the Association's Bylaws and has authority to amend the Association's Constitution upon concurrence of the Association's Assembly of members. The House authorizes committees and Sections of the Association and has the authority to discontinue them. The House sets the dues for membership upon recommendation of the Board of Governors.

A Delegate is responsible for attending each meeting of the House, participating fully in its proceedings and discharging the responsibilities of the House. The State Bar of Wisconsin reimburses the expenses incurred by its delegates for transportation and lodging for the meeting of the House held at the Annual Meeting of the American Bar Association. The American Bar Association reimburses the expenses, which conform to the American Bar Association policy, incurred by all delegates for transportation to the Mid-year meeting of the House. The State Bar reimburses its delegates for lodging expenses incurred by its delegates at the Mid-year meeting of the house.

It is the responsibility of each Delegate to keep his or her constituency fully apprised of the actions taken by the House, and, to the extent possible, matters pending before the House; and to assist constituent entities in presenting issues of concern for debate and action by the House.

Article IV Standing Committees

Section 1(a). Appointment. Number of Members. Term. Each of the standing committees other than

the Committee on Legal Assistance and the Continuing Legal Education Committee shall consist of 12 members. The Committee on Legal Assistance shall consist of 18 members, 3 of whom are attorneys employed by legal services, legal aid, or legal assistance providers. The Continuing Legal Education Committee shall consist of 13 members, one of whom must be a member of the Government Lawyers Division. The Diversity and Inclusion Oversight Committee shall have at least one member from the Board of Governors. The members of each such committee shall be appointed by the President for a term of three years, so arranged that the term of office of only one-third of the members shall expire in any year. No person is eligible for appointment to the same committee for more than two consecutive terms. The Government Lawyers Division member of the Continuing Legal Education Committee shall be appointed by the President for a term of one year. The chairperson of each committee shall be designated by the President for a term of one year. In the event of any vacancy in any committee it shall be filled by appointment by the President for the unexpired term. Members of committees shall serve until the appointment of their respective successors. A majority of the members of any committee shall constitute a quorum for the transaction of business. Each committee shall keep a record of its meetings and proceedings and shall submit an annual report to the Board of Governors. The Board of Governors may assign powers or duties to any standing committee in addition to those hereinafter set forth.

(b) Removal for Nonattendance. After two consecutive nonexcused absences from meetings of any com-

mittee, the chairperson of the committee shall report said absences to the President. The President shall thereupon notify such member of the member's removal from the committee, and appoint a replacement for the balance of the term of office.

Section 2. Committee on Continuing Legal Education. This committee shall provide guidance for the State Bar of Wisconsin's continuing legal education program, which is designed to serve the public interest by improving the competence of lawyers. Competence includes knowledge of substantive and procedural law, principles of ethics and professionalism, and techniques of law practice management. The continuing legal education program should be committed to providing a range of high quality educational and practice resources at competitive prices while recognizing that its long term vitality is dependent upon fiscal responsibility.

Section 3. Committee on Professional Ethics. This committee shall formulate and recommend standards and methods for the effective enforcement of high standards of ethics and conduct in the practice of law; shall consider the "Rules of Professional Conduct for Attorneys" as adopted by the Wisconsin Supreme Court and the observance thereof, and shall make recommendations for appropriate amendments thereto. The committee shall have authority to express opinions regarding proper professional conduct, upon written request of any member or officer of the State Bar. However, the committee shall not issue opinions as to the propriety of past or present conduct of specific member attorneys unless requested to do so by a grievance committee of the State Bar or by the Board

of Governors of the State Bar. Unless waived by the requestor or subject, the identities of all requestors of past and current opinions or advice shall be confidential and information relating thereto shall also remain confidential. Members of the committee or designees who provide ethics advice to member attorneys shall be subject to this requirement of confidentiality.

Section 4. Committee on Communications. This committee shall create, develop and implement effective means and methods of communication between the State Bar, courts, attorneys, clients, all forms of media and the general public. It shall suggest, encourage and foster the activities of local bar associations in communicating more efficiently and effectively in their respective areas. It shall be responsible for the relations of the State Bar to the public and shall report and make recommendations from time to time to the Board of Governors.

Section 5. Committee on Legal Assistance. This committee shall promote the establishment and efficient maintenance of legal aid organizations equipped to provide legal services to those unable to pay for such service; shall study the administration of justice as it affects persons in the low income groups; and shall study and report on methods of making legal service more readily available to persons of moderate means, and shall encourage and assist local bar associations in accomplishing this purpose.

Section 6. Diversity and Inclusion Oversight Committee. This committee shall carry out diversity and inclusion commitment and goals of the State Bar;

shall advise, facilitate and monitor efforts of the State Bar with regard to diversity and inclusion goals and strategies; shall recommend metrics to assess and monitor the State Bar's progress in advancing diversity and inclusion; shall maintain records and results on the State Bar's diversity and inclusion initiatives; shall collect and share information on diversity and inclusion projects from other jurisdictions; and shall report directly to the Executive committee on a continuous basis. The committee shall report at least annually to the board of Governors.

Section 7. Special Committees. Each special committee shall consist of a number of members determined and appointed by the President or, if the special committee is a committee of the Board of Governors, such number as shall be determined and appointed by the President with the advice and consent of the Board of Governors. Appointments to special committees shall be for a term of one year. No person is eligible for appointment to the same special committee for more than four consecutive years. Creation or abolition of a special committee by the President is subject to review and approval by the Board of Governors. The Chairperson of each special committee, other than a committee of the Board, shall be designated by the President for a term of one year. The Chairperson of each committee of the Board shall be designated by the Board for a term of one year. In the event of any vacancy in any special committee, it shall be filled by appointment by the President or, in the event of a vacancy in a committee of the Board, by the Board for the unexpired term. Members of the special committee shall serve until the appointment of their respective successors. Each special committee

shall keep a record of its meetings and proceedings and shall submit an annual report to the Board of Governors. The members of any special committee shall be subject to the removal provisions contained in Section 1(b).

Section 8. Legislative Oversight Committee.

(a) Composition. The Legislative Oversight shall be a standing committee composed of nine voting members, selected as follows: The President shall appoint four committee members, including the committee chair, each year; and the Section Leaders Council shall elect one member. Members shall serve for two-year terms. The first year that this Section becomes effective, the current president shall appoint eight members: four to two year terms and four to one year terms. The Executive Director and the State Bar Director of Public Affairs shall serve as ex-officio/nonvoting members. A vacancy shall be filled by the person or body responsible for originally appointing or electing the member whose departure from the committee has created the vacancy. Members of the Legislative Oversight Committee shall represent the State Bar as a whole and do not represent any individual section, division, or constituency. The committee shall recommend action(s) consistent with the overall best interest of the State Bar.

(b) Functions. (1) General. The Legislative Oversight Committee shall review and monitor all public policy positions, as defined in subsection (c), taken or proposed to be taken by the State Bar or its sections and shall assist the State Bar government relations staff in planning, setting priorities, and allocating re-

sources. The Legislative Oversight Committee also shall make recommendations and report to the Executive Committee and/or to the Board regarding State Bar and section public policy positions. The Legislative Oversight Committee shall also resolve all conflicts between sections seeking to take public policy positions pursuant to the procedures set forth in subsection (b)(4) and is the final arbiter of such disputes. The Legislative Oversight Committee shall be subject to the information requests and reporting requirements set forth in Article IV, Section 1(a).

(2) State Bar Positions. The Legislative Oversight Committee shall generally monitor State Bar government relations staff for compliance with Supreme Court Rules and compliance with the Keller rules on permissible lobbying activity by mandatory bar associations.

(3) Section Positions. The Legislative Oversight Committee shall monitor public policy positions adopted by the sections, the setting of section lobbying fees, and the costs of each section's annual legislative activity. The committee may order a section to cease using State Bar resources or to delay publicly releasing or expressing a public policy position until reasonable notice and/or an opportunity to act is given to the Board of Governors and/or the Executive Committee if: (a) a section position is contrary to, or in conflict with, a State Bar position; (b) a section position is contrary to, or in conflict with, another section's position, or opposed by another section; (c) the proposed communication does not sufficiently and clearly communicate that the position is that of a group of lawyers within the Bar and is not the posi-

tion of the State Bar; (d) the section has not complied with subsection (c)(3).

(4) Conflict Resolution. Whenever a conflict between two or more sections arises with regard to a public policy position, the following procedure will apply.

(i) The Chair shall first request the sections to meet informally to discuss the issues and try to work out an amicable resolution.

(ii) If informal discussions under (i) are unsuccessful, the Chair in his or her judgment may appoint a mediator to help the sections reach a solution;

(iii) If mediation is unsuccessful, or if in the Chair's judgment the conflict is intractable such that mediation would not be worthwhile, the Chair shall appoint a subcommittee of three members of the Committee, including a subcommittee chair, to review materials and hold a hearing on the matter. The subcommittee shall set deadlines for the submittal of materials from each section based upon the time frames involved in the issue and then shall hold a hearing, unless time does not permit for a hearing. Minutes shall be kept of any hearing. The subcommittee shall then issue a written decision governing which section, if any, may take the requested public policy position or such other guidelines and procedures for the sections to take positions on the issue in question.

(iv) The non-prevailing section in (iii) above may appeal the subcommittee's decision to the full Com-

mittee. The full Committee shall not review the matter de novo, but rather will review the materials previously submitted, the minutes from any hearing, and the decision of the subcommittee. The full Committee shall then vote on whether the subcommittee fairly applied State Bar Rules, By-laws, and procedures in reaching its decision. The decision of the full Committee is final and non-appealable.

(v) The Chair and/or the Committee may from time to time create further policies and procedures for conflict resolution that are not in conflict with, and do not supersede, above subsections (i) – (iv), for the more efficient resolution of conflicts. Notice of such policies and procedures shall be given to all sections and the Board of Governors in a timely fashion.

(5) Meetings; voting. The Legislative Oversight Committee shall meet at the call of the chair or at the call of the President. Meetings may be held on reasonable notice. Action on any matter requires approval by the affirmative vote of a majority of the committee's members. When necessary, late voting by members unable to attend or participate in the meeting will be counted.

(c) *Public Policy Positions.* (1) Definition. Public policy positions are statements, comments, and/or expressions of opinion concerning changes or proposed changes to, proposed or existing, laws, rules, or actions of the legislative, executive, and judicial branches of government and other positions of public advocacy.

(2) Public Policy Positions of the State Bar. Public policy positions of the State Bar as a whole shall be governed by procedures as adopted by the Board of Governors, including the 60 percent requirement set forth in Article III, Section 11(b). The vote on whether to approve the taking of a public policy position shall be by roll call. Divisions and committees may not take public policy positions on behalf of themselves or the State Bar except as authorized by the Board of Governors.

(3) Public Policy Positions of Sections.

(i) Criteria. No section or State Bar member on behalf of a section may express a position on a matter involving an issue of public policy unless the following conditions are met: (a) the matter is one on which the section's views would have particular relevance; (b) the position is adopted in accordance with section bylaws; (c) the position is expressly stated to be taken only on behalf of the section; (d) the section public policy position is adopted in accordance with procedures for public policy positions adopted by the Board of Governors; (e) the position is not contrary to an expressed State Bar position; (f) the section sends a summary of the public policy to the Legislative Oversight Committee; and (g) no section shall undertake any act which constitutes lobbying without the knowledge and consent of the State Bar's Director of Public Affairs or a designate. Review of section public policy positions shall be conducted pursuant to subsection (b)(3).

(ii) Bylaws. No section shall lobby unless its bylaws meet the requirements as set forth by the Board of Governors.

Article V Finance Committee

Section 1. Composition. There shall be a continuing Special Committee on Finance composed of the President, President-Elect, immediate Past-President, Treasurer, Chairperson of the Continuing Legal Education Committee or his or her designee, and four members who shall be appointed by the President and shall be experienced with the governing of the Bar and with financial management. The President shall appoint the chairperson.

Section 2. Functions. The Committee on Finance shall review the annual budget proposed by the Executive Director and make recommendations to the Board of Governors thereon, and shall maintain continuing budget and expenditure scrutiny during the year. The committee shall also deal with other financial aspects of the Association's operation, including review of financial statements and recommendations thereon, pension administration, investment and other asset management, and long-range financial planning; shall serve as a resource on financial policies and procedures for proposed actions of the Board of Governors and the Executive Committee; and shall perform such other functions and duties as are assigned by the Board of Governors, the Executive Committee or the President.

Article VI Section Organization and Activities

Section 1. Establishment, Consolidation and Discontinuance of Sections. Upon approval of an application for the establishment of a new section, the Board of Governors, by a vote of a majority of its members may establish such a section dedicated to a field of law not committed to any other section or committee of the Association. Every application to the Board of Governors for the establishment of a section shall set forth:

(a)The field of law to which the proposed section is to be dedicated, which shall be within the purposes of the State Bar and outside the field of law committed to any existing section or committee of the Association.

(b)A statement of the need for the proposed section.

(c)The proposed by-laws for the government of such section.

(d)The names of the several committees, if any, of the proposed section.

(e)A list of members of the Association who have signified their intention of applying for membership in the proposed section.

An application for the consolidation of existing sections shall set forth the information required in the case of an application for establishing a section. Such an application may be granted by the Board of Governors in its discretion, by vote of a majority of

the members of the Board of Governors, but only after notice by mail to the members of such section.

A section may be discontinued by vote of a majority of the members of the Board of Governors but only after notice by mail to the members of such section.

Section 2. Membership of Sections. Any member of the State Bar shall be entitled at the member's election to enroll in any section.

Section 3. Section Officers and Council. Each section shall have a chairperson and council and such other officers as the section bylaws may provide. The council of a section shall consist of the officers ex officio and such other members as may be provided in the by-laws. No change in the by-laws of any section shall be effective until approved by the Board of Governors.

Section 4. Section Dues. The members of any section may be required to pay section dues in such amount and for such purposes as the section, with the approval of the Board of Governors, may from time to time determine.

Section 5. Section Meetings. The officers and directors of each section shall arrange for meetings of the section in conjunction with the annual meeting of the State Bar. Special meetings may be held at such times and places as the section boards and officers may determine.

Section 6. Reports. Each section shall submit to the Board of Governors prior to the annual meeting of

the Association in each year a report of the activities of the section.

Section 7. Expenses. Expenditures out of the dues of sections shall be made only by direction of the council of the section; and the treasurer of the State Bar shall pay out of such dues only such amounts as the chairperson of the section shall certify to have been so authorized.

Article VII Amicus Curiae Briefs Briefs *amicus curiae* may be authorized and filed in the name of the State Bar of Wisconsin or one of its sections or divisions pursuant to the following guidelines, policies and procedures:

Section 1. State Bar of Wisconsin Briefs.

(a) Authorization. The Board of Governors may authorize the preparation and filing of a State Bar of Wisconsin brief *amicus curiae* by an affirmative vote of at least two-thirds of those members present and voting

(b) Appropriate Cases. Briefs *amicus curiae* may be authorized only when consistent with the purposes of the State Bar, as expressed in SCR 10.02(2).

(c) Preparation and Filing of Briefs.

1. A brief *amicus curiae* may be filed only after review and approval by the President of the State Bar who, in consultation with others as may be necessary and appropriate, shall insure that the brief is of high

professional quality and an accurate representation of State Bar policy.

2. In addition to the person or persons actually preparing the brief, the President of the State Bar shall also appear as counsel on the brief.

3. The State Bar shall pay for the costs of printing and filing an *amicus curiae* brief but will pay no legal fees for preparation or review of such brief.

(d) Role of Individual Members, Committees, Divisions and Sections.

1. Whenever practicable, appropriate State Bar committees, divisions and sections shall be consulted prior to authorization of an *amicus curiae* brief.

2. Individual members, committees, divisions and sections may recommend that a brief *amicus curiae* be filed in the name of the State Bar of Wisconsin, which recommendation shall include:

a. A full statement of the facts of the controversy and the status of the litigation;

b. A statement of the principles of law to be supported with a full explanation of the applicant's reasons for believing that the case is an appropriate one for State Bar involvement;

c. A statement advising when the recommendation was authorized and a description of any dissenting views when presented by a committee, division or section;

d. A full disclosure of any personal or professional interest in the matter of any proponent of the recommendation, or of any individual member of the section or division directors or officers or committee members which authorized the submission of the recommendation;

e. The name of the person or persons who are proposed to prepare the brief *amicus curiae*;

f. The names of all interested parties to whom a copy of the recommendation has been furnished prior to submission to the Board of Governors or Executive Committee.

(e) Involvement by State Bar Membership.

1. Whenever practicable, before the Board of Governors or Executive Committee votes on whether to authorize the filing of an *amicus curiae* brief, notice of the proposed action, inviting comment and recommendations from State Bar members, shall be published pursuant to SCR 10.12 or distributed by a method designed to reach State Bar members as quickly as possible.

2. All comments and recommendations from the membership timely received under (e)(1) shall be considered by the Board of Governors or Executive Committee prior to taking the proposed action.

Section 2. Section and Division Briefs.

(a) *Authorization.* No *amicus curiae* brief shall be filed by any committee, section or division of the State Bar of Wisconsin without the authorization provided herein.

1. Upon receipt of any request to file an *amicus curiae* brief from any person, lawyer, committee, section or division of the State Bar, the President or designee shall, as soon as practical, telephonically or electronically communicate such request to counsel for the opposing party in the court below and to any other committee, section or division of the State Bar that reasonably would be expected to have an interest in the issues of the case and invite any timely comment to such request.

2. If a request originates from a court, whether it goes first to a committee, section or division or directly to the Board of Governors, the foregoing paragraph shall not apply.

3. Authorization for the preparation and filing of a brief *amicus curiae* by a committee, section or division shall be by an affirmative vote of at least two-thirds of the members of the Board of Governors present and voting at an official meeting of the Board of Governors.

4. In the event the President of the State Bar of Wisconsin determines it is not feasible or practical for the Board of Governors to meet and act upon a requested authorization to file a brief *amicus curiae*, then Paragraph 3 shall not apply. In such case the President shall electronically communicate the request for such brief and any comments to all mem-

bers of the Board of Governors, which communication shall be for informational and comment purposes only. The President shall then contact and convene, either in person or through telephonic or electronic communication, a meeting of the Executive Committee of the State Bar of Wisconsin. The committee shall then, where deemed appropriate by the President, assume the responsibilities of the Board of Governors as to the authorization of the preparation and filing of an *amicus curiae* brief by affirmative vote of at least two-thirds of the members of the Executive Committee then participating and voting, provided that those Executive Committee members participating and voting constitute at least a majority of the Executive Committee.

5. If for any reason the President of the State Bar of Wisconsin is unable to assume the duties provided for above, the President-elect shall be authorized to act in the capacity of the President of the State Bar of Wisconsin for the limited purpose of determining whether or not it is feasible and practical to require an authorization of the total Board of Governors, or whether the situation demands immediate action and therefore the convening of the Executive Committee for the purpose of considering the *amicus curiae* brief request.

6. The President has the discretion to refuse to consider a request to file an *amicus curiae* brief in the event it is not submitted in a timely manner.

(b) *Appropriate Cases.* Briefs *amicus curiae* may be authorized only when consistent with the purposes of the State Bar, as expressed in SCR 10.02(2) and

the purposes of the section or division as expressed in the section bylaws.

(c) Preparation and Filing of Briefs.

1. A brief *amicus curiae* may be filed only after review and approval by the chairperson of the section or president of the division who, in consultation with others as may be necessary and appropriate, shall insure that the brief is of high professional quality and an accurate representation of section or division policy and in accordance with the authorization of the Board of Governors.

2. In addition to the person or persons actually preparing the brief, the chairperson of the section or president of the division shall also appear as counsel on the brief.

3. The section or division may pay for the costs of printing and filing an *amicus curiae* brief but may not pay legal fees for preparation or review of such brief.

4. The brief must include a statement that it is filed only by the section or division, not the Board of Governors or any other State Bar entity.

(d) Role of Individual Members, Committees, Divisions and Sections.

1. Whenever practicable, appropriate State Bar committees, and other divisions and sections shall be consulted prior to requesting authorization of an *amicus curiae* brief by the Board of Governors.

2. A section or division request for authorization to file an *amicus curiae* brief shall include:

a. A full statement of the facts of the controversy and the status of the litigation;

b. A statement of the principles of law to be supported with a full explanation of the reasons for believing that the case is an appropriate one for section or division involvement;

c. A statement advising when and by what vote it was decided to request authorization to file an *amicus* brief and a description of any dissenting views;

d. A full disclosure of any personal or professional interest in the matter of any individual member or officer or director of the section or division;

e. The name of the person or persons who are proposed to prepare the brief *amicus curiae*;

f. The names of all interested parties to whom a copy of the request for authorization has been furnished prior to submission to the Board of Governors or Executive Committee.

(e) Involvement by State Bar Membership.

1. Whenever practicable, before the Board of Governors or Executive Committee votes on whether to authorize the filing of an *amicus curiae* brief, notice of the proposed action, inviting comment and recommendations from State Bar members, shall be pub-

lished pursuant to SCR 10.12 or distributed by a method designed to reach State Bar members as quickly as possible.

2. All comments and recommendations from the membership timely received under (e)(1)1 shall be considered by the Board of Governors or Executive Committee prior to taking the proposed action.

Article VIII Indemnification of Officers, Employees, and Agents

Section 1. Power. The State Bar of Wisconsin (herein State Bar) shall indemnify any person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether with or without merit (other than an action, suit or proceeding by or in the right of the State Bar) by reason of the fact that he or she is or was a member of the Board of Governors of the State Bar or its Executive Committee, an officer or employee of the State Bar, or an agent of the State Bar acting on its behalf as a committee, division, or section member or as an appointee of an officer or the Executive Director of the State Bar (all of the above herein designated as "State Bar Persons"), against expenses, including attorney's fees, judgments, fines and amounts paid in settlement, actually and reasonably incurred by the person in connection with such action, suit or proceeding if he or she breached or failed to perform any duty resulting solely from his or her status as a State Bar Person unless the breach or failure to perform constitutes any of the following:

(a) A willful failure to deal fairly with the State Bar or its members in connection with a matter in which the State Bar Person has a material conflict of interest.

(b) A violation of criminal law, unless the State Bar Person had reasonable cause to believe his or her conduct was lawful or no reasonable cause to believe his or her conduct was unlawful.

(c) A transaction from which the State Bar Person derived an improper personal profit.

(d) Willful misconduct.

Section 2. Effect of Termination. The termination of any action, suit or proceeding referred to in Section (1) by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not of itself create a presumption that indemnification of the State Bar Person is not required under this section.

Section 3. Success on Merits. To the extent that a State Bar Person has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in section (1), or in defense of any claim, issue or matter therein, he shall be indemnified against expenses, including attorney's fees, actually and reasonably incurred by the person in connection therewith.

Section 4. Denial of Indemnification. Any indemnification under section (1) shall be made by the State Bar unless there is a determination that indemnifica-

tion of the State Bar Person is improper in the circumstances because he or she has breached or failed to perform a duty in a manner described in Section (1)(a) to (d). Such determination shall be made by one of the following subject to review by the court which conducted the action, suit or proceeding or by another court of competent jurisdiction:

(a) By the Executive Committee of the Board of Governors of the State Bar by a majority vote of a quorum consisting of members who were not parties to such action, suit or proceedings; or

(b) By the Board of Governors of the State Bar by a majority vote of a quorum consisting of members who were not parties to such action, suit or proceeding.

Section 5. Advance Payment. Expenses including attorney's fees, incurred in defending a civil or criminal action, suit or proceeding may be paid by the State Bar in advance of the final disposition of such action, suit or proceedings upon receipt of an undertaking by or on behalf of the State Bar Person to repay such amount if it is ultimately determined that he or she is not entitled to be indemnified by the State Bar as provided in this Article.

Section 6. Insurance. The State Bar shall have power to purchase and maintain insurance on behalf of any State Bar Person against any liability asserted against the person and incurred by him or her in any capacity as a State Bar Person whether or not the State Bar would have to indemnify against such liability under this Article. Where there is insurance

coverage the State Bar will not indemnify against attorney's fees paid by the State Bar Person except where such person has reasonably retained counsel because a claim exceeds the insurance coverage.

Article IX Amendment

The provisions of these By-Laws shall be subject to amendment or abrogation by (i) resolution adopted by vote of two-thirds of the members of the Board of Governors, or (ii) action of the members of the Association expressed through the referendum procedure defined in SCR 10.08. When any change in the By-Laws has been made, the Executive Director shall publish notice thereof, including a copy of the amendatory resolution, in an official publication of the State Bar pursuant to SCR 10.12, and he or she shall file a certified copy thereof with the Clerk of the Supreme Court. A petition for review of any such change in the By-Laws will be entertained by the Court if signed by twenty-five or more active members of the Association and filed with the Clerk of the Court within sixty days after publication of notice of such change. Hearing upon such a petition will be pursuant to notice in such manner as the Court may direct.