

NOTICE CONCERNING STATE BAR DUES REDUCTION AND ARBITRATION PROCESS

§1.0 Overview

In *Keller v. State Bar of California*, the United States Supreme Court held that a mandatory bar may not fund political or ideological activities with mandatory dues unless those activities are germane to regulating the legal profession or improving the quality of legal services. The *Keller* Court further held that a mandatory bar could satisfy its constitutional obligation to ensure that such activities were funded only with voluntary payments by adopting a procedure that would allow dissenting members to deduct the pro rata amount spent on those activities from their mandatory dues payment, and providing a mechanism to challenge the calculation of the reduction like that it had previously approved for mandatory union dues in *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986).

Following *Keller*, the Wisconsin Supreme Court adopted the procedure set forth at SCR 10.03(5)(b) and State Bar bylaw Article 1, Section 5 when it reintegrated the State Bar. That procedure was upheld in the face of a constitutional challenge in *Thiel v. State Bar of Wisconsin*, and has governed the State Bar’s procedures for calculating the annual dues reduction since then. However, in *Kingstad v. State Bar of Wisconsin*, decided in September 2010, the Seventh Circuit held that case law subsequent to *Thiel* required that all activities of the bar, not only political or ideological activities, must be germane to the purposes identified in *Keller* in order to be funded with mandatory dues. Activities that are not germane to these two purposes are considered to be “nonchargeable.” The State Bar may use compulsory dues of all members for all other activities, provided the activities are within the purposes of the State Bar as set forth in SCR 10.02(2). These activities are considered to be “chargeable.”

The method used to calculate the amount of the dues reduction is based on the method approved in *Chicago Teachers Union v. Hudson*. In that case, the U.S. Supreme Court indicated that a labor union may use the year for which the most recent audit report is available as the base line period for determining chargeable and nonchargeable activities and calculating the cost of the nonchargeable activities.

To calculate this year’s dues reduction, the State Bar’s Executive Committee used this historical approach and reviewed activities for the fiscal year ending June 30, 2023 (FY23), the most recent fiscal year for which there is an audit report. (A copy of the audit report can be found at wisbar.org/auditreport.)

The committee scrutinized all State Bar activities during FY23 to identify nonchargeable activities. For each activity found to be nonchargeable, the State Bar calculated the cost of the activity—including all applicable overhead and administrative costs—and the amount of dues expended on the activity. That process resulted in the determination that \$213,916 of dues was expended on nonchargeable activities during FY23.

§2.0 Dues Reduction for FY25

Each State Bar member’s FY25 pro rata portion of the dues devoted to nonchargeable activities was calculated by a process that involved translating the anticipated total dues paid for FY25 (before reduction) into the equivalent number of full dues payments. The State Bar estimates that there will be 25,565 State Bar members in FY25 paying various levels of dues that translate into 19,927 full dues payment equivalents. Dividing \$213,916 (the total dues devoted to nonchargeable activities in FY23) by 19,927 (the number of full dues payment equivalents) results in a pro rata reduction of \$10.73 for members paying full dues.

Although strict calculation results in an available dues reduction of \$10.73 for members paying full dues, the Board of Governors voted to set the available dues reduction at \$11.00 for members for the fiscal year beginning July 1, 2024 (FY25). [Active members admitted to practice on or before April 30, 2022, voting judicial members, and Supreme Court justices can withhold \$11.00; active new members admitted to practice for 3 years or less (in this case, on or after May 1, 2022), senior active, and inactive members can withhold \$5.50; nonvoting judicial members can withhold \$7.33] The purpose of setting the dues reduction at the higher amount of \$11.00 is to give those who take the reduction the benefit of any error that may have been made in the calculation and make it unnecessary for members to request arbitration for small amounts.

§3.0 Detailed Calculation of the Dues Reduction

§3.1 Cost of and Dues Expended on FY23 Nonchargeable Activities

As noted earlier, to calculate the cost of and dues expended on chargeable and nonchargeable activities, the State Bar used the year for which the most recent audit report exists—that is, FY23. The State Bar reviewed all FY23 activities to identify those activities not germane to the regulation of the legal profession or improving the quality of legal services.

If an activity was determined to be nonchargeable, its cost was calculated. The cost included all staff time and facilities, governance, and administration expenses allocated in accordance with established State Bar accounting practices. Any revenues generated by the activity, such as Inside Track advertising, or other income earmarked for the activity were deducted from the total cost before the amount of dues devoted to the activity was calculated. In addition, surplus revenue over expense from other State Bar activities and unallocated revenue were assigned to the activity on a pro rata basis with dues revenue. Using this methodology, the total cost of and amount of dues devoted to nonchargeable activities in FY23 is calculated as follows:

Activity	Cost of Nonchargeable Activity	Portion Funded by Dues
Board of Governors	\$64,311	\$49,663
Legislative Activities	92,408	71,359
Annual Meeting & Conference	0	0
ABA Delegates	15,337	11,844
ABA Lobby Day	0	0
Division ABA	1,124	868
Government Lawyers Division	4,281	3,306
Non-Resident Lawyers Division	0	0
WI Lawyer Magazine	20,010	15,452
Legislative Oversight Committee	5,795	4,475
Executive Committee	315	243
Board of Governors Policy Committee	4,006	3,094
InsideTrack	2,601	2,008
Grassroots & Rotunda Report	20,634	15,934
Sections	12,943	9,995
Young Lawyers Division	6,099	4,710
Young Lawyers Conference	1,311	1,012
Senior Lawyers Division	1,043	806
Social Media/WisLaw Now	5,080	3,923
Podcasts	4,103	3,168
Diversity Committee	0	0
Local Bar Relations Committee	982	758
Legal Assistance Committee	0	0
WISLAP Wellness Program	10,833	8,365
Strategic Planning Committee	3,796	2,931
Total Cost of Nonchargeable Activities	\$277,013	
Total Dues Devoted to Nonchargeable Activities		\$213,916

A brief description of these FY23 nonchargeable activities follows.

ABA. All of the expenses related to the State Bar Delegates attending the ABA House of Delegates at the ABA annual or midwinter convention and all of the expenses related to ABA Lobby Day.

Government Relations Activities. While not all lobbying activities are non-chargeable under a Keller analysis, the State Bar of Wisconsin Board of Governors unanimously approved at its February 9, 2018 meeting a policy in an effort to ensure it is protecting the first amendment rights of its members including those who take the annual Keller dues reduction. As a result, “it is the policy of the Board of Governors to include in its annual calculation of expenditures deemed non-chargeable to mandatory dues those expenditures that relate to activities which constitute direct lobbying on policy matters before the Wisconsin State Legislature or the United States Congress. The State Bar of Wisconsin Board of Governors adopts as policy and directs the Executive Committee to include with the annual dues reduction under SCR 10.03(5)(b), in addition to other expenditures deemed non-chargeable, the amount of expenditures related to State Bar lobbying of public policy matters under the Federal positions and SBW positions codes used by the State Bar timekeeping system, regardless of whether they would otherwise qualify as chargeable under a Wisconsin Keller dues analysis.”

During FY23, work on the following legislative topics/issues are thus included as non-chargeable activities:

- All direct lobbying activities
- All direct grassroots lobbying activities
- Rotunda Report newsletter
- Liaison to the Wisconsin Uniform Laws Commission
- Preparation of the Public Affairs Policy Book

State Bar of Wisconsin:

FEDERAL ISSUES:

Violence Against Federal Judges
ENABLE Act/Attorney-Client Privilege

STATE ISSUES:

Expungement of Criminal Records
Juvenile Court Jurisdiction (Second Chance/17 year-olds/
Raise the Age)
The Use of Cash Bail and Pretrial Reform
Tax on Legal Services
Overall Funding of the Criminal Justice System
Pay Progression for Publicly Employed Attorneys
Funding and Positions for the Prosecutors’ Offices
State Public Defenders’ Office Reimbursement to Private Bar
State Civil Legal Services Funding
Court Funding (SBW)
Elimination of the Judicial Council/Funding

Children & the Law:

Permanency Plans
Juvenile Guardianships
Prosecuting a person under the age of 18 with committing an act of prostitution. (Safe Harbor)
Adoption Reform
Uniform Law Commission Parentage Act

Construction & Public Contracts:

Revisions to Lien Laws – Clearing Dormant Liens
Utility Regulation

Criminal Law:

Definition of Sexual Contact
Mandatory Minimum Sentence for Felon in Possession of a Firearm

Elder Law:

Elder Abuse including in Financial Transactions

Family Law:

Divorce by Affidavit
Equal Placement of Children
Judicial Notice of Court Records in DV Cases
Notification Requirements When Income Changes

Real Property & Probate:

Remote Notary/RULONA
Uniform Trust Code

Board of Governors. The board’s discussion on the Policy Position on Bail Reform, updates and position recommendations from the State Bar Government Relations team, reports on ABA activities, ABA House of Delegates, and reports from State Bar Presidents regarding legislative advocacy meetings they attended.

Government Lawyers Division. Expenses in connection with reporting of lobbying activities, discussion on seeking policy changes via lobbying, and discussion of SBW policy position on bail reform.

Young Lawyers Division. Expenses in connection with reports of ABA activities and a grassroots and lobbying overview.

Young Lawyers Conference. Expenses in connection with speaker Deanna Singh, Uplifting Impact’s presentation “Hustle with Purpose”.

Senior Lawyers Division. Expenses in connection with the visiting aging lawyers program.

Section Lobbying and Administrative services. Expenses over and above the fees collected related to lobbying and administrative services provided by the State Bar of Wisconsin to the 24 sections.

Strategic Planning Committee. Expenses in connection with discussions about advocacy.

Inside Track/WisBar News. Expenses in connection with the following articles:

- September 2022 article titled “Constitution Day: Mock Trial Teacher-Coaches Connect Students with the Constitution”
- September 2022 article titled “Law School Loans: Avenues for Debt Relief”
- January 2023 article titled “Breaking Point: Vacant Prosecutor Positions Fuel Justice System Crisis”
- January 2023 article titled “Practical Tips to Increase Your Home Security”
- February 2023 article titled “State Treasurer One of 12 Attorneys Elected to Statewide Office”
- February 2023 article titled “State Bar Board Approves Updated Bail Policy, Discusses Budget”
- April 2023 article titled “Constitutional Bail Amendments Could Stress System”
- May 2023 article titled “Inadequate Private Bar Rate for SPD Cases Adds Fuel to Justice System Fire”

- May 2023 press release titled “State Bar presidents comment on Joint Finance Committee’s criminal justice funding votes”
- May 2023 article titled “Graduation Season: Outlook on Employment and Law School Debt”

Podcasts. Expenses in connection with the following podcasts:

- Episode 6: “Life, Death, Change & Purpose”
- Episode 8: “Advocating for the Criminal Justice System”

Social Media. Posts to the State Bar’s multiple social media accounts across several platforms that were of general interest and not specifically related to the practice of law.

Legislative Oversight Committee. All expenses related to the committee were treated as non-chargeable as the committee provides oversight to the legislative activities of the Bar and Sections.

Board of Governors Policy Committee: All committee meeting time and expenses.

Local Bar Relations Committee: Discussions relating to public defender initiatives for the legislature.

Wisconsin Lawyer Magazine. Pages devoted to the following articles:

- “Upholding Democracy: What Lawyers Can Do” by Margaret Wrenn Hickey
- “Public Attorney Staffing Shortages Continue” by Margaret Wrenn Hickey
- “It’s Time Our Elected Officials Act” by Larry J. Martin
- “Criminal Justice Crisis: ‘The Bill is Coming Due’” by Jeff M. Brown
- “My Lunches with Tony” by Larry J. Martin
- “We Knew This Day Was Coming” by Robert G. Barrington
- “Justice in 2023” by Gerald W. Mowris
- “An (Open) Love Letter to Wisconsin Lawyers” by Julie Bonasso
- “Stepping Up in Service to Our Communities” by Larry J. Martin

- “After the Feast” by Starlyn Rose Tourtillott Miller
- “Pick Your Winner: 2023 Smartphone Lineup” by James Pearson
- “Goals are Guides, Not Cudgels” by Erin R. Ogden
- “Law Enforcement, the Public, and Victims Deserve Fully Funded Legal Services” by Peter M. Tempelis
- “Stepping Up for Democracy and the Rule of Law” by Larry J. Martin
- “’Tis the Season” by Larry J. Martin
- “Justice is Owed to the Accused and to the Accuser” by Melinda J. Tempelis
- “Final Thought: A Final Thought” by Joe Forward
- “From Charm School to Law School” by Katja Kunzke
- “Cash Bail Amendment Penalizes Those in Poverty” by Kalei Kell
- Any pages containing reviews of books whose subject matter was determined to be not specifically related to the practice of law
- A page advertising WISLAP Well-Being Week
- Every page in the magazine that included an ad to engage in the State Bar Advocacy Network

Wisconsin Lawyer Assistance Program. Expenses related to wellness programming that was of general interest and not specifically related to the practice of law.

Executive Committee. The committee’s discussions on the Policy Position on Bail Reform, the criminal justice funding campaign, grassroots outreach efforts, the ABA House of Delegates, and other legislative priorities.

§4.0 Deadline for Arbitration Requests

Any member who wishes to call for arbitration of the amount of the dues reduction permitted for FY25 should deliver a request in writing to the Executive Director of the State Bar within 30 days of receipt of the dues statement. For details of the arbitration process, see SCR 10.03(5)(b) and Article 1, Section 5 of the State Bar bylaws, which are available on wisbar.org and wicourts.gov.

**Payments are due no later than July 1, 2024.
Payments received after July 1, 2024
may be subject to late fees.**



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