

Exhibit A

Fiscal Year 2020
Keller Dues Reduction Notice

NOTICE CONCERNING STATE BAR DUES REDUCTION AND ARBITRATION PROCESS

51.0 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 Bar. That procedure was upheld in the face of a constitutional challenge in *Thiel v. State Bar of Wisconsin*, and has governed the Bar's procedures for calculating the annual dues reduction since then. However, in *Kingslad 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, 2018 (FY18), the most recent fiscal year for which there is an audit report. (A copy of the audit report can be found at wisbar.org/2018_Auditors_Report).

The committee scrutinized all State Bar activities during FY18 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 \$302,580 of dues was expended on nonchargeable activities during FY18.

52.0 Dues Reduction for FY20

Each State Bar member's FY20 pro rata portion of the dues devoted to nonchargeable activities was calculated by a process that involved translating the anticipated total dues paid for FY20 (before reduction) into the equivalent number of full dues payments. The State Bar estimates that there will be 25,400 State Bar members in FY20 paying various levels of dues that translate into to 20,332 full dues payment equivalents. Dividing \$302,580 (the total dues devoted to nonchargeable activities in FY18) by 20,332 (the number of full dues payment equivalents) results in a pro rata reduction of \$14.88 for members paying full dues.

Although strict calculation results in an available dues reduction of \$14.88 for members paying full dues, the Board of Governors voted to set the available dues reduction at \$15.45 for members for the fiscal year beginning July 1, 2019 (FY20). (Active members admitted to their first bar April 30, 2017, or earlier, voting judicial members, and Supreme Court justices can withhold \$15.45; active members admitted to their first bar after April 30, 2017, and inactive members can withhold \$7.73; nonvoting judicial members can withhold \$10.30) The purpose of setting the dues reduction at the higher amount of \$15.45 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.

53.0 Detailed Calculation of the Dues Reduction

53.1 Cost of and Dues Expended on FY18 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, FY18. The State Bar reviewed all FY18 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 FY18 is calculated as follows:

Activity	Cost of Chargeable Activity	Portion Funded by Dues
Board of Governors	\$47,136	\$36,949
Legislative Activities	57,908	45,394
Annual Meeting & Conference	21,897	17,165
ABA Delegates	22,714	17,805
ABA Lobby Day	26,559	20,819
Division ABA	11,387	8,926
Government Lawyers Division	3,338	2,617
Non-Resident Lawyers Division	26,189	20,529
WI Lawyer Magazine	18,193	14,261
Disparate Incarceration	14,365	11,261
Legislative Oversight Committee	4,014	3,146
Executive Committee	3,295	2,583
C.A.R.E. Program	621	487
Board of Governors Policy Committee	2,021	1,584
Bench and Bar Committee	3,805	2,983
InsideTrack	12,690	9,947
Rotunda Report	4,550	3,567
Sections	17,250	13,522
Young Lawyers Division	42,853	33,591
Social Media	29	22
Legal Assistance Committee	3,648	2,860
Public Assistance Committee	1,640	1,285
WISLAP Award	39,901	31,277
Total Cost of Nonchargeable Activities	\$386,003	
Total Dues Devoted to Nonchargeable Activities		\$302,580

A brief description of these FY18 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

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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 FY18, work on the following legislative topics/issues are thus included as non-chargeable activities:

- Rotunda Report
- SBW monitoring of federal & state legislative activity

State Bar of Wisconsin:

16 Year Term
AB 502 (Additional ADA Positions) Assistant DA
Disparate Incarceration (Committee Activities)
Expungement
Juvenile Court Jurisdiction
Officer of the Court Battery
Pay Progression
AB 117 (DAs in Private Practice of Law for Civil Purposes) Pro Bono Govt Attorneys
Prosecutor Board
Prosecutor Funding
SPD Private Bar Reimbursement
State Civil Legal Services Funding
AB 567 (PD Student Loan Payment Pilot Program) (Student Loan Relief/Law School Debt)
Tax on Legal Services
AB 548/SB 456 (Wrongfully Imprisoned Persons) (Wrongful Conviction Compensation)
Uniform Laws

Budget Bill Topics: AB 64/SB 30

Court Funding (SBW)
Court of Appeals Funding (SBW)
District Attorney Funding (SBW)
Drug Testing for W-2 Benefits (Public Interest)
Funding for Department of Justice (SBW)
Homestead Credit Reforms (PILS)
Judicial Council – Elimination (SBW)
Judicial Commission – Reassignment (SBW)
Compensation for State Attorneys (SBW)
Judicial Salaries (SBW)

Alternative Dispute Resolution:

General Only – No lobbying issues

Bankruptcy:

General Only – No lobbying issues

Business Law:

General Only – No lobbying issues

Children & the Law:

Juvenile Guardianship
Juvenile Shackling
Safe Haven
TPR Waiver of Counsel
Family Treatment Courts

Civil Rights & Liberties:

License Discrimination
AJR 21/SJR 18 (Convention Proposing Amendments)
Constitutional Convention

Criminal Law:

General Only – No lobbying issues

Construction & Pub Contract:

General Only – No lobbying issues

Elder Law:

Guardianship Reform

Family Law:

Family Treatment Court
Juvenile Guardianship
Juvenile Shackling
Safe Haven
TPR Waiver of Counsel
Child Relocation/Removal
Child Support Guidelines
Contingent Placement
Deployed Parent
Equal Placement
Child Support/Medicaid
AB 57/SB 19 (Child Support Compliance for FoodShare)

Health:

General Only – No lobbying issues

Indian Law:

AB 114 (Battery of Tribal Judge, Prosecutor, or Enforcement Officer)

Litigation:

Service of Pleadings
AB 773/SB 645 (Tort Reform)
AB 57/SB 19 (Elimination of Court Reporters)

Public Interest:

AB 57/SB 19 (Child Support Compliance for FoodShare)
AB 47/SB 43 (Misstatements on Credential Applications)
AB 52 (Court Proceedings in Traffic Violations)
AB 67/SB 25 (Motor Vehicle Liability Insurance Requirement)
AB 122/SB 61 (Forfeiture of Property)

Real Property & Probate:

Financial POA
Real Estate Transfers

Taxation:

General Only – No lobbying issues

Annual Meeting & Conference. Expenses in connection with the plenary lunch program featuring P.J. O'Rourke as well as the closing plenary program: "Government Ethics, Conflicts, and the Constitution in the Trump Era", featuring Richard W. Painter.

Bench/Bar Committee. Expenses in connection with legislative updates provided by SBW staff and discussions regarding the future focus of the committee through a Bench and Bar action plan.

Public Education Committee. Expenses in connection with meetings where the Legal Reporters Workshop and The Reporter Legal Handbook were discussed.

Legal Assistance Committee. Expenses in connection with legislative updates on Congressional funding for the Legal Services Corporation, the state appropriation for civil legal aid to domestic violence victims, and the status of AB 115/AB 116.

Board of Governors. The board's discussion on the topics of Petition 17-03 regarding class actions, the Legal Reporters Workshop, the Second Chance Bill, the LRIS Pro Bono Hate Crimes Panel, mass and disparate incarceration, updates and position recommendations from the BOG Policy Committee, reports on ABA activities, ABA House of Delegates, ABA Lobby Days and other legislative updates.

Government Lawyers Division. Expenses in connection with the Government Lawyers Division board meetings where legislative updates were provided.

Non-Resident Lawyers Division. Expenses in connection with legislative updates provided by SBW staff, ABA House of Delegates updates and discussions regarding mass incarceration and running for public office.

Young Lawyers Division. Expenses in connection with legislative updates and discussions of ABA activities.

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

Division ABA Activities. Expenses in connection with the division representatives attending the ABA House of Delegates at the ABA annual or midwinter convention and any other ABA activities.

Inside Track. Expenses in connection with the following articles:

- July 2017 article titled "On Family Law in the Military"
- July 2017 article titled "Race and Policing: A Roadmap to Reform"
- August 2017 article titled "Tommy Thompson: Congress has a Golden Opportunity on Health Care"
- September 2017 article titled "Joint Finance Committee Acts on SPD Budget, Including Wages and Private Bar Reimbursement"
- September 2017 article titled "Mission to Armenia: Wisconsin to Bolster Justice System a Half World Away"
- September 2017 article titled "Legislature Begins to Shift Focus to Fall Legislative Session"
- October 2017 article titled "Governor Walker Signs Biennial State Budget"
- October 2017 article titled "State Bar's Family Law Section Supports Legislative Solution to Child Custody Relocation"
- November 2017 article titled "Joint Legislative Corrections Committee Hears Testimony on Evidence-Based Decision Making"
- November 2017 article titled "State Bar's Family Law Section Supports Child Custody Legislation"
- November 2017 article titled "Proposal to Return Some 17-Year-Olds to Juvenile Court is Reintroduced"
- November 2017 article titled "On Family Law: Proposed Legislation on Removal of Children"
- November 2017 article titled "Death with Dignity Act: A Wisconsin Look"
- December 2017 article titled "Shackling Kids: Counties Shifting on Policy, but Wisconsin in the Minority"
- December 2017 article titled "Top 25 Articles of 2017: A Year in Review"
- December 2017 article titled "Legislature Preps for Busy End to 2017-18 Session"
- December 2017 article titled "Two Birds, One Stone: Bill Helps Lawyers with Debt if They Take Rural PD Cases"
- January 2018 article titled "Public Hearing Held on Bill to Return Some 17-Year-Olds to Juvenile Court"
- January 2018 article titled "Private Bar Rate Increase Legislation Circulated for Cosponsorship"
- February 2018 article titled "Legislature Races to Finish the 2017-18 Session"
- March 2018 article titled "Inbox (1 New): Bill Allows Email Service of Discovery Requests, Other Papers"
- May 2018 article titled "Political Satirist, Humorist P.J. O'Rourke: His Witty Take on U.S. Politics and Global Affairs"

Social Media. Expenses related to SBW Facebook post highlighting article on mass and disparate incarceration in Wisconsin.

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.

C.A.R.E. Program. Expenses related to the public outreach program that educates students and adults on the responsible use of credit and other fundamentals of financial literacy.

Disparate Incarceration Task Force. All meeting time and expenses.

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

Wisconsin Lawyer Magazine. Pages devoted to the following articles:

- "Keep the Dreams Alive: Preserve DACA" by John L. Sesini & Benjamin M. Crouse
- "Decreasing the High Cost of Mass Incarceration Policies" by Paul G. Swanson
- "Fear of Favor: Judicial Elections and Campaign Finance Law" by Brendan Fischer & Nick Harken
- "How Did We Get Here? Wisconsin's Mass & Disparate Incarceration" by Mary Prosser & Shannon Toole
- "Stand Up for the Law: Run for Public Office" by Paul G. Swanson
- "My Favorite Time of the Year" by Roy B. Evans
- "Mass Incarceration: Fiscal & Social Costs" by Michael O'Hear
- Inbox "Do Judicial Recusal Rules Threaten Due Process Guarantees?"
- Inbox "Owning the Problem, Looking for Solutions"
- Inbox "Considering President Trump's Proposed Tax Plan"
- Briefly "LSC Funding: Deep Cuts Ahead?"

Executive Committee. The committee's discussions on Petition 17-03 regarding class actions, grassroots outreach efforts, the Disparate Incarceration Project, the Second Chance Bill, the ABA House of Delegates, and other legislative priorities.

WISLAP Award. Time and expenses related to rescinding the WISLAP Volunteer Award.

54.0 Deadline for Arbitration Requests

Any member who wishes to call for arbitration of the amount of the dues reduction permitted for FY20 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 I, Section 5 of the State Bar bylaws, which are available on wisbar.org and wicourts.gov.

Payments are due no later than July 1, 2019.

**Payments received after July 1, 2019
may be subject to late fees.**



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MEM71 3/19

New Insurance Policy Allows for an “All-In-One” Trust Account

It is now possible to have just one trust account that permits electronic transactions!

SCR 20:1.15 (f)(3)¹ permits lawyers to conduct electronic transactions with only one trust account and one business account. Thus, a lawyer using this alternative could accept an electronic payment of advanced fees directly into the lawyer’s only trust account and electronically transfer the fees to the lawyer’s only business account when the fees were earned.

The new option requires a “bond or crime policy,” which is **NOT** cyber insurance or malpractice insurance. It is a policy specifically designed to protect against theft or loss of funds from computer fraud or employee theft.

Crime Coverage Policy NOW Available to State Bar of Wisconsin Members!

To address this issue, the State Bar worked with Office of Lawyer Regulation and insurance companies to develop a product that meets the requirements of SCR 20:1.15(f)(3). Complete information is located at wisbar.org/crimepolicy.

Because this was collaborative effort with the Office of Lawyer Regulation, they have agreed that the policy meets the requirements of SCR 20:1.15(f)(3)c.2, and a statement to that effect may be found on the Bar’s website.

The availability of this tailored insurance policy through the State Bar of Wisconsin removes one the major obstacles to lawyers taking full advantage of the modernizing provisions of the current trust account rule.

What Is Commercially Reasonable Account Security?

While there is no definition of “commercially reasonable account security,” lawyers can demonstrate compliance by consulting with their financial institution and documenting the steps taken to reasonably ensure the security to the account. Additional information is available in the sidebar to the right.

Guidance From the OLR on Commercially Reasonable Account Security

With respect to “commercially reasonable account security,” the rule does not provide specifics. SCR 20:1.15(f)(1), however, states:

Security of transactions. A lawyer is responsible for the security of each transaction in the lawyer’s trust account and shall not conduct or authorize transactions for which the lawyer does not have commercially reasonable security measures in place. A lawyer shall establish and maintain safeguards to assure that each disbursement from a trust account has been authorized by the lawyer and that each disbursement is made to the appropriate payee. Only a lawyer admitted to practice law in this jurisdiction or a person under the supervision of a lawyer having responsibility under SCR 20:5.3 shall have signatory and transfer authority for a trust account.

The Office of Lawyer Regulation provides the following guidance:

This new rule requires lawyers to communicate with their financial institution as to what is “commercially reasonable” based upon the specific types of e-banking that a lawyer plans to use. It is very likely that security measures will evolve over time in response to the evolution of cyber threats and that minimum security requirements for the lawyer or law firm to follow will be identified in an agreement with the financial institution. At this time, commercially reasonable security measures may include some or all of the following:

- 1) A dedicated computer for e-banking that is not connected to the firm’s server that has software protection against malware, spyware, and viruses;
- 2) Education of lawyers and law firm staff on corporate account takeover, social engineering techniques, and other cyber threats;
- 3) ACH Debit blocks;
- 4) ACH Positive pay;
- 5) On-line review of account activity at least daily;
- 6) Security Tokens for two factor authentication (Tokens are small hardware devices with a PIN number and a time sensitive code to conduct transactions);
- 7) Dual controls (Two people must authorize a transfer); and
- 8) Creation of a contingency plan to mitigate and/or recover unauthorized transfers in the event of a cyberattack or corporate account takeover.

1 SCR 20:1.15 (f)(3)

This rule, which authorizes the all-in-one trust account, reads:

c. Alternative to E-Banking Trust Account. A lawyer may deposit funds paid by credit card, debit card, prepaid or other types of payment cards, and other electronic deposits into a trust account, and may disburse funds from that trust account by electronic transactions that are not prohibited by sub. (f)(2)c., without establishing a separate E-Banking Trust Account, provided that all of the following conditions are met:

1. The lawyer or law firm maintains commercially reasonable account security for electronic transactions.

2. The lawyer or law firm maintains a bond or crime policy in an amount sufficient to cover the maximum daily account balance during the prior calendar year.
3. The lawyer or law firm arranges for all chargebacks, ACH reversals, monthly account fees, and fees deducted from deposits to be deducted from the lawyer’s or law firm’s business account; or the lawyer or law firm replaces any and all funds that have been withdrawn from the trust account by the financial institution or card issuer within 3 business days of receiving actual notice that a chargeback, surcharge, or ACH reversal has been made against the trust account; and the lawyer or law firm reimburses the account for any shortfall or negative balance caused by a chargeback, surcharge, or ACH reversal. The lawyer shall reimburse the trust account for any chargeback, surcharge, or ACH reversal prior to disbursing funds from the trust account.