

# 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 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 *Kingsstad 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, 2022 (FY22), the most recent fiscal year for which there is an audit report. (A copy of the audit report can be found at wisbar.org/keller.)

The committee scrutinized all State Bar activities during FY22 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 \$304,622 of dues was expended on nonchargeable activities during FY22.

### \$2.0 Dues Reduction for FY24

Each State Bar member’s FY24 pro rata portion of the dues devoted to nonchargeable activities was calculated by a process that involved translating the anticipated total dues paid for FY24 (before reduction) into the equivalent number of full dues payments. The State Bar estimates that there will be 25,761 State Bar members in FY24 paying various levels of dues that translate into 20,022 full dues payment equivalents. Dividing \$304,662 (the total dues devoted to nonchargeable activities in FY22) by 20,022 (the number of full dues payment equivalents) results in a pro rata reduction of \$15.22 for members paying full dues.

Although strict calculation results in an available dues reduction of \$15.22 for members paying full dues, the Board of Governors voted to set the available dues reduction at \$15.50 for members for the fiscal year beginning July 1, 2023 (FY24). [Active members admitted to practice on or before April 30, 2021, voting judicial members, and Supreme Court justices can withhold \$15.50; active members admitted to practice for 3 years or less (in this case, after April 30, 2021), senior active and inactive members can withhold \$7.75; nonvoting judicial members can withhold \$10.33] The purpose of setting the dues reduction at the higher amount of \$15.50 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 FY22 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, FY22. The State Bar reviewed all FY22 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 FY22 is calculated as follows:

Activity	Cost of Nonchargeable Activity	Portion Funded by Dues
Board of Governors	\$42,214	\$42,214
Legislative Activities	62,552	62,552
Annual Meeting & Conference	30,612	30,612
ABA Delegates	1,596	1,596
ABA Lobby Day	1,346	1,346
Division ABA	3,703	3,703
Government Lawyers Division	2,852	2,852
Non-Resident Lawyers Division	4,633	4,633
WI Lawyer Magazine	13,738	13,738
Legislative Oversight Committee	5,291	5,291
Executive Committee	758	758
Board of Governors Policy Committee	3,368	3,368
InsideTrack	521	521
Grassroots & Rotunda Report	59,264	59,264
Sections	61,829	61,829
Young Lawyers Division	2,417	2,417
Senior Lawyers Division	7,968	7,968
Social Media/WisLaw Now	0	0
Legal Assistance Committee	0	0
Total Cost of Nonchargeable Activities	\$304,662	
Total Dues Devoted to Nonchargeable Activities		\$304,662

A brief description of these FY22 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 FY22, work on the following legislative topics/issues are thus included as non-chargeable activities:

- All direct lobbying activities
- All direct grassroots 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  
Reduction of Student Debt

STATE ISSUES:

Expungement of Criminal Records  
Juvenile Shackling During Courtroom Proceedings  
Juvenile Court Jurisdiction (Second Chance/17 year-olds/  
Raise the Age)  
Student Loan Relief/Law School Debt  
The Use of Cash Bail and Pretrial Reform  
Broadband Expansion to Underserved Communities  
Pay Progression for Publicly Employed Attorneys  
Racial Disparities/Law Enforcement Reform  
State Public Defenders’ Office Reimbursement to Private Bar  
State Civil Legal Services Funding  
Court Funding (SBW)

Business Law:  
Business Entity Acts

Children & the Law:  
Subsidized Guardianship  
Juvenile Shackling During Courtroom Proceedings  
Prosecuting a person under the age of 18 with committing an act of prostitution. (Safe Harbor)

Adoption Reform  
Uniform Law Commission Parentage Act  
Adoptee Access to Birth Records  
Foster Parent Bill of Rights  
Open Adoption  
Drug Effectuated Child  
Elimination of Jury Trials in TPR Cases  
Duty to Participate in Termination of Parental Rights Cases  
Termination of Parental Rights for Incarcerated Persons

Civil Rights and Liberties:  
Election Law – Violations of Election Law and Changes to Venue Requirements for Trials

Construction & Public Contracts:  
Revisions to Lien Laws – Clearing Dormant Liens

Criminal Law:  
Retail Theft – Mandatory Minimum Sentencing for Retail Thefts

Elder Law:  
Elder Abuse including in Financial Transactions

Family Law:  
Reduce Waiting Period Following Divorce  
Granting Court Commissioner Authority to Finalize Legal Separations  
Non-Parent GAL Visitation  
Treatment of Stipulation Orders Before Final Judgement  
Equal Placement of Children  
Judicial Notice of Court Records in DV Cases  
Uniform De Novo Review of Circuit Court Commissioner Decisions  
Required Exchange of Financial Information under Ch.767  
Child Support Guidelines

Real Property & Probate:  
Remote Notary/RULONA  
Payment on Death Accounts  
Responsibility for Private Road Maintenance  
40 Year Easements  
Uniform Trust Code

**Annual Meeting & Conference.** Expenses in connection with Thursday’s luncheon plenary speaker, Megan Phelps-Roper and her presentation entitled “Bridging Ideological Divides: Dialogue That Overcomes Hate, Makes Connections, and Changes Minds” (an educational program to share ways we can learn to successfully engage those with opposing viewpoints and beliefs) and Friday’s session 7, “A Conversation with Laura Coates, CNN Anchor and Senior Legal Analyst”

**Legal Assistance Committee.** Expenses in connection with legislative updates on Civil Legal Aid funding.

**Board of Governors.** The board’s discussion on the Racial Justice Task Force recommendations and the Greater Wisconsin Initiative Working group recommendations, updates and position recommendations from the State Bar Government Relations team, reports on ABA activities, ABA House of Delegates, ABA Lobby Days, reports from State Bar Presidents regarding legislative advocacy meetings they attended and opening remarks from former Governor Tommy Thompson.

**Government Lawyers Division.** Expenses in connection with legislative session updates.

**Non-Resident Lawyers Division.** Expenses in connection with a State Bar presidential candidate presentation which included discussion of the Wisconsin legislature.

**Young Lawyers Division.** Expenses in connection with reports of ABA activities.

**Senior Lawyers Division.** Expenses in connection with the visiting aging lawyers program and BOG legislative positions.

**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.

**Inside Track.** Expenses in connection with the following articles:

- December 2021 article titled “Judges, Defense Lawyers Join State Bar in Supporting Juvenile Shackling Petition”

**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.

**Wisconsin Lawyer Magazine.** Pages devoted to the following articles:

- “Human Rights & US Foreign Policy: A Tough Approach to Trade Issues” by Ngosong Fonkem
- “It’s My Constitutional Right!” by Jessica A Liebau
- “Expungement Clinics: Removing Barriers” by Michael Seung-Hyock Yang
- “Connect with Legislators: Lawyers are Constituents Too” by Cheryl Daniels
- “What Processing Pardon Applications Taught Me” by Felicia L Owen

- “Becoming Comfortable with Discomfort” by TR Edwards
- “Nudges, Algorithms, and Human Choice: What Does the Future Hold?” by James Casey
- “Lawyers are Democracy’s First Line of Defense” by Larry J Martin
- “A Question of Balance: Law, Technology, and Democracy” by James Casey
- “Creating a More Diverse and Equitable Legal System” by Jill Kastner, Starlyn Tourtillott Miller & Alex Lodge
- “State Bar Lobbying Program Finishes Successful 2021-22 Legislative Session” by Cale Battles, Lynne Davis & Devin Martin
- Every page in the magazine that included an ad to engage in the State Bar Advocacy Network

**Executive Committee.** The committee’s discussions on the Racial Justice Task Force recommendations and the Greater Wisconsin Initiative Working group recommendations, 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 FY24 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, 2023.**  
**Payments received after July 1, 2023**  
**may be subject to late fees.**



**STATE BAR  
OF WISCONSIN**

**P.O. Box 7158 • Madison, WI 53707-7158  
(608) 257-3838 • (800) 728-7788**