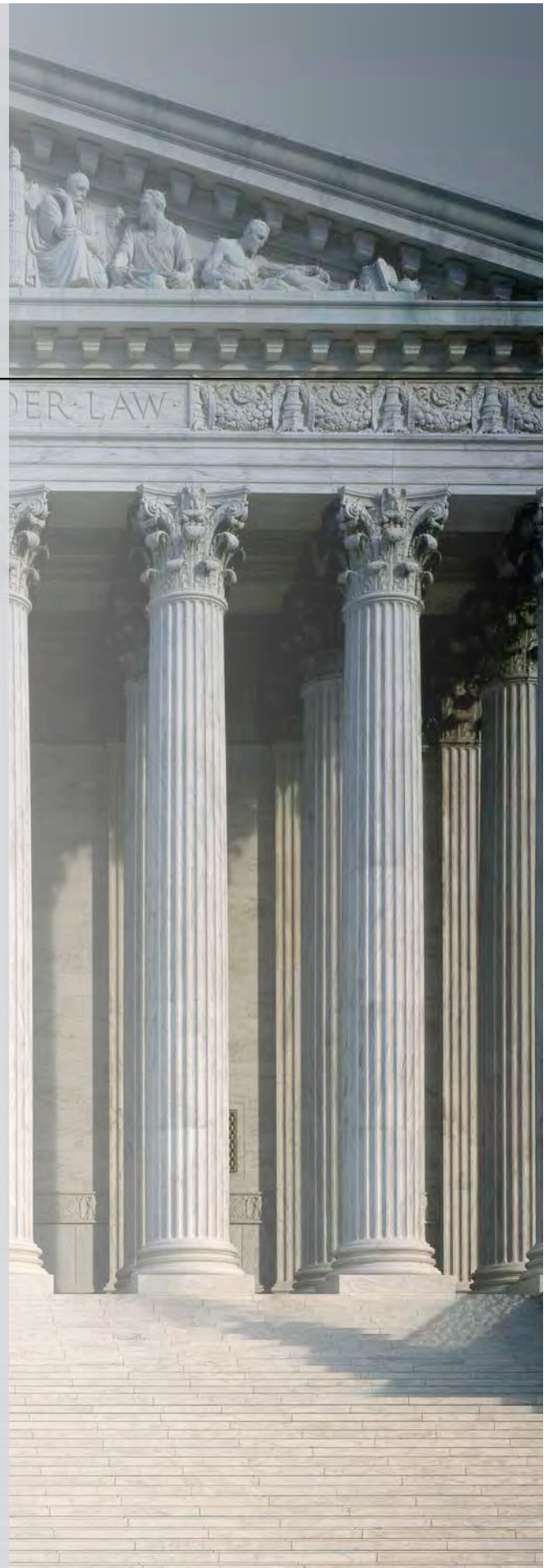


Mandatory State Bar Associations

# Managing Keller

The following information regarding mandatory bars and how they manage Keller related activities was compiled by State Bar of Michigan between February 2014 and May 2014. This was a significant research initiative to support the Michigan Supreme Court Task Force on the Role of the State Bar of Michigan. As information was gathered, executive directors from several state bars expressed an interest in receiving this compilation of material. We are pleased to share this information with those who find it useful. Please note that the State Bar of Michigan does not update this compilation as policies and statutes change in various states. Users are encouraged to check with the state bars directly to learn of any relevant changes.

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## About the Washington State Bar Association

The WSBA's mission is to serve the public and the members of the Bar, ensure the integrity of the legal profession, and to champion justice. Founded in 1889, the Washington State Bar Association is part of the judicial branch, exercising a governmental function authorized by the Washington Supreme Court to license the state's more than 36,000 lawyers. The WSBA both regulates lawyers under the authority of the Court and serves its members as a professional association — all without public funding. As a regulatory agency, the WSBA administers the bar admission process, including the bar exam; provides record-keeping and licensing functions; and administers the lawyer discipline system. The WSBA also licenses and regulates other legal professionals, like Limited License Legal Technicians (LLLT) and Limited Practice Officers (LPO). As a professional association, the WSBA provides continuing legal education for attorneys, in addition to numerous other educational and licensee-service activities.

## **Washington State Bar**

### **Mandatory Bar Associations**

The terms mandatory, integrated and unified bars are used interchangeably to refer to bar organizations in which membership is required to practice law, and which combine within the organization the admission, regulation and disciplinary functions of the bar. The constitutionality of mandatory bars has been repeatedly upheld by the United States Supreme Court. *Lathrop v. Donohue*, 367 U.S. 820, 81 S. Ct. 1826, 6 L. Ed. 2d 1191 (1961); *Keller v. State Bar of California*, 496 U.S. 1, 110 S. Ct. 2228, 110 L. Ed. 2d 1 (1990).

This includes the requirement that lawyers pay a license fee to the State Bar. It has been held that it is not a violation of a member's First Amendment rights to use mandatory fees to fund activities germane to the regulation of the legal profession or improving the quality of legal services available to the people of the state.

#### **"Keller Deduction"**

In *Keller v. State Bar of California*, the U.S. Supreme Court held that a state bar may not, over a member's objection, spend mandatory license fees to fund activities that are:

1. for activities that are of a political or ideological coloration, and
2. that are not necessarily or reasonably related to:
  - a. regulating the legal profession; or
  - b. improving the quality of legal services available to the public.

This gives rise to the so-called Keller deduction. A member who objects to use of his or her funds for purposes which do not meet the Keller test may deduct that portion from his or her annual fee. This chiefly concerns lobbying activities by the State Bar that do not fall within the Keller exception. Essentially, any lobbying activities are political or ideological in nature. Thus, the issue for state bars is whether lobbying activities are related to regulation of the legal profession or improving the quality of legal services to the public. The Washington State Bar Association's political activities are limited by GR 12(c) and Arts. I(C) and V(G) of the WSBA Bylaws.

Following procedures approved in *Popejoy v. New Mexico Board of Bar Commissioners*, 831 F. Supp. 814 (USDC NM 1993) and 847 F.Supp. 155 (USDC NM 1994), the executive director, in consultation with the director of legislative affairs and general counsel, determines those activities which are "nonchargeable" to objecting members based on the most recent audit report. Notice is given to members at the time they are sent their annual license fee notice. A member

may ask for arbitration of the amount of fee which may be deducted if the member disagrees with the amount of the deduction.

## **Washington State Bar Association**

Although the WSBA was organized as a mandatory bar by legislative adoption of the State Bar Act (RCW 2.48) which describes the WSBA as "an agency of the state," the WSBA is not a state agency. Although the Supreme Court has never specifically held that the State Bar Act is an unconstitutional infringement on the separation of powers between the legislative and judicial branches of state government, it has found several of its provisions to be contrary to the inherent power of the Supreme Court to regulate the judiciary and bar. The two most notable cases are *Graham v. State Bar Association*, 86 Wn.2d 624, 548 P.2d 310 (1976), and *WSBA v. State of Washington*, 125 Wn.2d 901, 890 P.2d 1047 (1995). In the *Graham* case, which concerned an attempt by the state auditor to conduct a post-audit of the WSBA treasury and accounts, the Supreme Court held that despite the language in RCW 2.48, the WSBA is not a state agency. The Court held that:

. . . the source of the court's power to admit, enroll, disbar, and discipline is exclusively in the Supreme Court as one of its inherent powers. . . . It was not necessary, therefore, for the legislature to act to accomplish the purposes achieved by the 1933 legislation [RCW 2.48]. The power to accomplish the integration of the bar, its supervision and regulation is found in this court, not the legislature.

In *WSBA v. Washington*, which concerned a statute passed by the legislature which would have made the WSBA subject to collective bargaining, the Supreme Court held:

This court's control over Bar Association functions is not limited to admissions and discipline of lawyers. The control extends to ancillary administrative functions as well. . . . The ultimate power to regulate court-related functions, including the administration of the Bar Association, belongs exclusively to this court.

The Supreme Court has adopted General Rule (GR) 12, Washington State Bar Association: Purposes, which sets out the general purposes of the WSBA, and specifies authorized activities and activities which are not authorized. The language of GR 12 is incorporated into Article I of the WSBA Bylaws. The internal affairs of the WSBA, including its membership, governance, and operations, are established by the WSBA Bylaws.

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## GR 12.1

## WASHINGTON STATE BAR ASSOCIATION: PURPOSES

(a) Purposes: In General. In general, the Washington State Bar Association strives to:

- 1) Promote independence of the judiciary and the bar.
- 2) Promote an effective legal system, accessible to all.
- 3) Provide services to its members.
- 4) Foster and maintain high standards of competence, professionalism, and ethics among its members.
- 5) Foster collegiality among its members and goodwill between the bar and the public.
- 6) Promote diversity and equality in the courts, the legal profession, and the bar.
- 7) Administer admissions to the bar and discipline of its members in a manner that protects the public and respects the rights of the applicant or member.
- 8) Administer programs of legal education.
- 9) Promote understanding of and respect for our legal system and the law.
- 10) Operate a well-managed and financially sound association, with a positive work environment for its employees.
- 11) Serve as a state-wide voice to the public and the branches of government on matters relating to these purposes and the activities of the association.

(b) Specific Activities Authorized. In pursuit of these purposes, the Washington State Bar Association may:

- 1) Sponsor and maintain committees, sections, and divisions whose activities further these purposes;
- 2) Support the judiciary in maintaining the integrity and fiscal stability of an independent and effective judicial system;
- 3) Provide periodic reviews and recommendations concerning court rules and procedures;
- 4) Administer examinations and review applicants' character and fitness to practice law;
- 5) Inform and advise lawyers regarding their ethical obligations;
- 6) Administer an effective system of discipline of its members, including receiving and investigating complaints of lawyer misconduct, taking and recommending appropriate punitive and remedial measures, and diverting less serious misconduct to alternatives outside the formal discipline system;
- 7) Maintain a program, pursuant to court rule, requiring members to submit fee dispute to arbitration;
- 8) Maintain a program for mediation of disputes between members and their clients and others;
- 9) Maintain a program for lawyer practice assistance;
- 10) Sponsor, conduct, and assist in producing programs and products of continuing legal education;
- 11) Maintain a system for accrediting programs of continuing legal education;
- 12) Conduct audits of lawyers' trust accounts;
- 13) Maintain a lawyers' fund for client protection in accordance with the Admission to Practice Rules;
- 14) Maintain a program for the aid and rehabilitation of impaired members;
- 15) Disseminate information about bar activities, interests, and positions;
- 16) Monitor, report on, and advise public officials about matters of interest to the bar;
- 17) Maintain a legislative presence to inform members of new and proposed laws and to inform public officials about bar positions and concerns;
- 18) Encourage public service by members and support programs providing legal services to those in need;
- 19) Maintain and foster programs of public information and education about the law and the legal system;
- 20) Provide, sponsor and participate in services to its members;
- 21) Hire and retain employees to facilitate and support its mission, purposes, and activities, including in the bar's discretion, authorizing collective bargaining;
- 22) Collect, allocate, invest, and disburse funds so that its mission, purposes and activities may be effectively and efficiently discharged.

(c) Activities Not Authorized. The Washington State Bar Association will not:

- 1) Take positions on issues concerning the politics or social positions of foreign nations;
- 2) Take positions on political or social issues which do not relate to or affect the practice of law or the administration of justice;
- 3) Support or oppose, in an election, candidates for public office.

[Adopted effective July 19, 1987; amended effective December 10, 1993; September 1, 1997; September 1, 2007; September 1, 2013.]

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## Keller Deduction

### Keller Compliance Option for the Year 2014

#### Notice to WSBA Members

In a U.S. Supreme Court case, *Keller v. State Bar of California*, the Court ruled that a bar association may not use mandatory member fees to support political or ideological activities that are not reasonably related to the regulation of the legal profession or improving the quality of legal services. The bar is required to identify that portion of mandatory license fees that go to such "nonchargeable" activities and establish a system whereby objecting members may either deduct that portion of their fees or receive a refund. This year (2014), objecting members may deduct up to \$4.70 if paying \$325; \$2.35 if paying \$162.50; \$2.90 if paying \$200; \$1.18 if paying \$81.25; or \$0.70 if paying \$50.

#### Overview

Under *Keller v. State Bar of California*, the WSBA cannot use the compulsory membership fees of objecting WSBA members for political or ideological activities that are not reasonably related to the regulation of the legal profession or improving the quality of legal services. These activities are considered "nonchargeable." The WSBA may use compulsory membership fees for all other activities.

WSBA members may deduct a specified amount from their membership fee payment that represents each member's pro rata portion of fees devoted to nonchargeable activities. The method used to calculate the fee reduction is based on the method approved by the U.S. Supreme Court in *Chicago Teachers Union v. Hudson*. In that case, the Court indicated that it was appropriate to use the year for which the most recent audit report is available as the base line period for determining chargeable and nonchargeable activities and for calculating the cost of the nonchargeable activities. To calculate the 2014 fee reduction, the WSBA used its fiscal year 2013 budget and activities.

Based on the decision of the Impartial Decision maker in *Popejoy v. New Mexico Board of Bar Commissioners*, the Board of Governors of the WSBA has concluded that the largest portion of the activities in the WSBA budget that are "political or ideological" are a portion of those activities funded as legislative activities. To calculate the 2014 fee reduction for the nonchargeable portion of legislative activities, the WSBA used its fiscal year 2013 legislative budget.

#### Deadline for Arbitration Requests

Any member who wishes to call for arbitration of the amount of the fee reduction permitted for 2014 should deliver a request in writing to the Executive Director of the WSBA by February 1, 2014. For details of the arbitration process, see "Arbitration Process" below.

#### Detailed Calculation of the Fee Reduction

The Executive Director reviewed all of the fiscal year 2013 activities in accordance with the opinion of the Impartial Decision maker in *Popejoy v. New Mexico Board of Bar Commissioners*, a case where all of the activities of the State Bar of New Mexico were challenged, and determined the activities that would include political or ideological activities not reasonably related to the regulation of the legal profession or improving the quality of legal services.

The fiscal 2014 budget for the WSBA's legislative activities is divided by the total number of license fee paying members of the WSBA at the time this notice was prepared to arrive at the amount of each member's fee attributable to legislative activities. That amount is then apportioned by the percentage of time spent by WSBA staff on specific legislative activities in the most recent legislative session, plus a proportionate share of the legislative general administrative activity. Based on records from the 2013 legislative session, we estimate that 55.60% of staff legislative time was spent on nonchargeable activities.

The WSBA has used an extremely "conservative" test for determining whether individual issues would be included in the deduction, i.e., the WSBA has erred on the side of considering issues nonchargeable even when a reasonable argument could be made that such issues were reasonably related to regulating the legal profession or improving the quality of legal services.

#### Arbitration Process

a. A member of the WSBA who contends that the WSBA has incorrectly set the amount of fee that can be deducted may demand arbitration by delivering a written demand for arbitration on or before February 1, 2014. 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 each objecting member.

- b. Within 14 days of receipt of a timely demand for arbitration, the WSBA shall submit the matter forthwith to the Chief Justice of the Washington Supreme Court for appointment of an arbitrator. All timely demands for arbitration shall be consolidated for hearing.
- c. A member demanding arbitration is required to pay his or her WSBA fee, excepting the amount in dispute, on a timely basis as otherwise required by the WSBA Bylaws. Failure to pay the fee by the requisite date may result in suspension as provided by the WSBA Bylaws.
- d. Unless the parties agree to a different schedule, a hearing shall be held within 30 days of the appointment of the arbitrator. The arbitrator shall determine the date, time, and location of the arbitration hearing(s) and shall so notify the parties at least 15 days prior to said hearing(s). The arbitrator will hold hearings in which the parties will be permitted to participate personally or through counsel admitted to practice in the state of Washington.
- e. The burden is on the member(s), as a condition of arbitration, to identify each challenged activity with such specificity as to allow the Bar to respond. The burden is on the Bar to establish the accuracy of the determination of the Keller calculation. Members demanding arbitration shall have access to the financial records upon which the Bar based the determination of the amount of fee 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.
- f. All parties will be given the opportunity to present evidence and to present arguments in support of their positions. The following rules shall apply to the arbitration proceedings:
- i. There will be no transcripts or post-hearing briefs; except, however, post-arbitration motions for reconsideration or clarification are permitted.
  - ii. The arbitrator will issue a written opinion, stating the reasons for the decision, within 14 days of the close of the hearing. The opinion will be brief and will be based on the evidence and arguments presented.
  - iii. The arbitrator shall be compensated at an hourly rate established pursuant to BOG policy for the hearing, preparation, and study time, and shall be reimbursed for all necessary expenses of the arbitration. The WSBA will pay for the arbitrator's services.
  - iv. The arbitration is not a judicial proceeding but is sui generis. Except for production of documents as set forth in Paragraph 5 above, or as may be stipulated to by the parties, there is no discovery, and the civil rules, arbitration rules, rules of evidence, and other court rules shall not apply.
  - v. The arbitrator shall have no authority to add, subtract, set aside, or delete from any Supreme Court Rule or WSBA Bylaw.
  - vi. The arbitrator shall have no authority to add, subtract, set aside, or delete from any Supreme Court Rule or WSBA Bylaw.
  - vii. The scope of the arbitration is limited to reviewing the challenged activities specified for the purpose of determining whether the Bar has correctly calculated the Keller deduction, and the sole relief potentially available through arbitration is a change in the amount of the named parties' Keller deduction for that licensing year.
  - viii. The arbitration shall be binding and the decision of the arbitrator final, with no right of trial de novo or appeal.
- g. Members admitted to the WSBA during the course of a year shall be advised of this notice with their initial fee statements. Such members may demand arbitration within 30 days following receipt of the notification. If arbitration is pending at the date of delivery of a demand for arbitration, 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.

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## POLITICS NORTHWEST

The Seattle Times political team explores national, state and local politics.



November 5, 2012 at 12:48 PM

### 42 attorneys object to state bar association's support of Ref. 74

Posted by [Lornel Tumbull](#)

More than 40 members of the Washington State Bar Association have signed a letter asking the organization's board of governors to publicly revoke its endorsement of Referendum 74, the statewide same-sex marriage ballot measure, saying such support violates the organization's bylaws.

In an Oct. 17 letter, the 42 attorneys also demanded the organization refund or allow future deduction of the portion of their dues attributable to activities in support of Ref. 74. Many state attorneys, it said, "oppose same-sex marriage and therefore disagree with, dissent from and object to" the board's position on Ref. 74.

Bellevue attorney Chris Evans, who wrote the letter on behalf of the others, called the board's endorsement "mission creep."

In September, the board passed a resolution supporting Ref. 74, and in a subsequent letter to its more than 29,000 members explained the decision was based on several principles, including the understanding that equal access to the rights and responsibilities of civil marriage is a matter of justice.

Debra Carnes, spokeswoman for the bar association, said the organization has received several emails from attorneys who object to or support the bar's position. She said there's a process for members to file a petition if they want to affect any policy enacted by the board.

The attorneys who signed the letter cited the 1990 case of Keller v State Bar of California, in which the U.S. Supreme Court ruled that attorneys who are required to be members of a state bar association have a First Amendment right to refrain from subsidizing the organization's political or ideological activities.

Under Keller, they say, the bar is not allowed to engage in activities that are "of a political or ideological nature that are not necessarily or reasonably related to regulating the legal profession or improving the quality of legal services to the public." Ref. 74, they argue, falls within that category.

In a letter responding to the members, the board's president said the organization has consistently found that issues like Ref. 74 do affect the practice of law and the administration of justice. It said Keller does not prohibit the bar from taking positions on any issue, but rather forbids it from using mandatory member fees to support such positions. It offered the attorneys the option of deducting from their dues an amount ranging from 98 cents to \$6.40.

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readmitted.

2. A voluntarily resigned former member seeking readmission through reciprocal admission pursuant to APR 18 must comply with all requirements for filing such application and for admission upon approval of such application.

N. **BAR EXAM MAY BE REQUIRED.**

All applications for reinstatement after disbarment shall be subject to character and fitness review, and taking and passing the Washington Bar examination, pursuant to the provisions of APR 25. All applications for readmission after voluntary resignation shall be subject to character and fitness review pursuant to the provisions of APR 20-24. All applications for readmission to Active membership from Suspended status shall be handled in a similar fashion to applications for readmission from Inactive status. The Character and Fitness Board, and (on review) the Board of Governors, have broad authority to withhold a transfer to Active or to impose conditions on readmission to Active membership, which may include taking and passing the Washington State Bar examination, in cases where the applicant fails to meet the burden of proof required by APR 20-24. The member/former member shall be responsible for the costs of any investigation, bar examination, or proceeding before the Character and Fitness Board and Board of Governors.

**IV. GOVERNANCE**

A. **BOARD OF GOVERNORS.**

The Board of Governors (BOG) is the governing body of the WSBA which determines the general policies of the Bar and approves its budget each year.

1. **Composition of Board of Governors.**

The Board of Governors shall consist of (a) the President, pursuant to the State Bar Act; (b) one member elected from each Congressional District, except in the Seventh Congressional District where members shall be elected from separate geographic regions designated as North and South, and identified by postal zip codes as established by the Bar Association in accordance with these Bylaws and Board of Governor policy; and (c) three members elected at-large pursuant to these bylaws.

2. **Duties.**

- a. The Board of Governors selects the Executive Director and elects the President-elect of the Bar. The Board of Governors annually reviews the Executive Director's performance. The Board of Governors operates as a representative body of all members. As such, the Board of Governors carries out the mission of the Bar and furthers the WSBA's Guiding Principles, all within the mandate of General Rule 12.

- b. Each Governor represents a constituency of the Bar as defined by these bylaws. As a representative, each Governor is expected to communicate with members about Board actions and issues, convey member viewpoints to the Board, and to fulfill liaison duties as assigned.
- c. Meetings of the Board of Governors shall be held as provided in these bylaws. Each Governor is committed to attending all board meetings except, in a Governor's judgment, when an emergency or compelling circumstance arises that prevents participation, and to attending other functions as possible.
- d. Governors appointed to serve as BOG liaison to a WSBA committee, task force, council, section, board, or other WSBA entity are not voting members of those entities. Liaisons may be present during, but shall not participate in, executive session or confidential deliberations except when requested to do so as a resource.

3. Term of Office.

Governors shall take office at the close of the final regularly scheduled Board meeting of the fiscal year in which they were elected. Governors shall hold office for a term of three years, except as may be otherwise provided by these bylaws.

4. Vacancy.

- a. Vacancy due to resignation, death, or removal by Board of Governors.

- 1) Any Governor may be removed from office for good cause by a 75% vote of the entire Board of Governors exclusive of the Governor subject to removal, who shall not vote. The vote shall be by secret written ballot. Good cause for removal shall include incapacity to serve or conduct or activities that bring discredit to the Bar.
- 2) If a vacancy occurs due to resignation, death, or the removal of a Governor by the BOG, and 12 months or less remain on said Governor's term, in the Board of Governors' sole discretion the position may remain vacant until the next regularly scheduled election for that Governor position. In that event, no interim governor shall be elected or appointed to the position.
- 3) If a vacancy occurs due to resignation, death, or the removal of a Governor by the BOG, and more than 12 months remain on said Governor's term, the Board of Governors shall elect an eligible candidate to serve as Governor until the next regularly scheduled election for that Governor position

b. Vacancy due to recall by members

- 1) If a Governor is removed due to recall and 12 months or less remain on that Governor's term, in the Board of Governors' sole discretion the position may remain vacant until the next regularly scheduled election for that Governor position. In that event, no interim governor shall be elected or appointed to the position.
- 2) If a Governor is removed due to recall and more than 12 months remain on that Governor's term, a special election shall be conducted using the general procedures set forth in the "Election of Governors from Congressional Districts" provisions of these bylaws. The application period for any special election held pursuant to this section shall be no less than 30 days and shall, at a minimum, be prominently posted on the WSBA website and e-mailed to all members eligible to vote in the election who have valid e-mail addresses on record with the Bar.
- 3) Regardless of whether a special election will be held to fill a Governor position which is vacant due to recall by the members, such position shall not be filled by any interim governors selected by the BOG or appointed by the president.

B. OFFICERS OF THE BAR.

The officers of the Bar shall consist of a President, President-elect, Immediate Past-President, and Treasurer. The WSBA Executive Director serves as secretary in an *ex officio* capacity. Only Active members may serve as officers of the Bar.

1. President.

The President shall be the chief spokesperson of the Bar, and shall preside at all meetings of the Board of Governors and at any meetings of the Bar. The President has the authority to set the agenda; take action to execute the policies established by the Board of Governors; assign Governors as liaisons to WSBA sections, committees, task forces, specialty bar associations, and other law related organizations; and to appoint task forces, BOG committees, or other ad hoc entities to carry out policies established by the Board of Governors. The President shall further perform those duties that usually devolve upon such officer. The President may vote only if the President's vote will affect the result. The President shall present a report to the membership covering the principal activities of the Bar during the President's tenure.

2. President-elect.

The President-elect performs the duties of the President at the request of the President, or in the absence, inability, recusal, or refusal of the President to perform those duties. The President-elect shall perform such other duties as may be assigned by the President or the Board of Governors. The President-elect is

not a voting member of the Board of Governors except when acting in the President's place at a meeting of the Board of Governors and then only if the vote will affect the result.

### 3. Immediate Past President.

The Immediate Past President performs such duties as may be assigned by the President or the Board of Governors. The Immediate Past President shall perform the duties of the President in the absence, inability, recusal, or refusal of the President, President-elect, and Treasurer to perform those duties. The Immediate Past President is not a voting member of the Board of Governors except when acting in the President's place at a meeting of the Board of Governors and then only if the vote will affect the result.

### 4. Treasurer.

The Treasurer shall chair the WSBA Budget & Audit Committee and is responsible for ensuring that the Board of Governors and Officers are informed about the finances of the Association. The Treasurer shall perform the duties of the President in the absence, inability, recusal, or refusal of the President and the President-elect to perform those duties. The Treasurer shall perform such other duties as are assigned by the President or the Board of Governors.

### 5. Executive Director

The Executive Director is the principal administrative officer of the Bar. The Executive Director is responsible for the day-to-day operations of the Bar including, without limitation: (1) hiring, managing and terminating Bar personnel, (2) negotiating and executing contracts, (3) communicating with Bar members, the judiciary, elected officials, and the community at large regarding Bar matters, (4) preparing an annual budget for the WSBA Budget and Audit Committee, (5) ensuring that the WSBA books are kept in proper order and are audited annually, (6) ensuring that the annual audited financial report is made available to all Active members, (7) collecting debts owed to the bar and assigning debts for collection as deemed appropriate, (8) acquiring, managing, and disposing of personal property related to the Bar's operations within the budget approved by the BOG, (9) attending all BOG meetings, (10) reporting to the Board of Governors regarding Bar operations, (11) ensuring that minutes are made and kept of all BOG meetings, and (12) performing such other duties as the Board of Governors may assign. The Executive Director serves in an *ex officio* capacity and is not a voting member of the Board of Governors.

### 6. Terms of Office.

- a. The President-elect is elected by the Board of Governors, as set forth in these bylaws. The President-elect shall succeed the President unless removed from office pursuant to these Bylaws.
- b. The President-elect and Treasurer shall take office at the close of the

1. The Board of Governors may delegate work to BOG standing and special committees, the membership of which shall be established by the President with due consideration given to Governors' membership requests. The BOG standing committees shall include, at a minimum, the following: Awards Committee; Budget & Audit Committee; Legislative Committee; Personnel Committee; and Diversity Committee. Governors and Officers are voting members of BOG committees and task forces. WSBA staff are non-voting members of BOG standing committees, unless the chair determines otherwise, and may be voting members of other committees and task forces at the chair's discretion.
2. BOG Legislative Committee
  - a. Purpose: The BOG Legislative Committee is authorized to propose or adopt positions on behalf of the Board of Governors with respect to legislation that has been introduced or is expected to be introduced in the Washington State Legislature, including the authority to propose amendments to legislation or to adopt positions on amendments to legislation.
  - b. Membership: The President shall appoint the Committee, which shall consist of the following voting members:
    - 1) Eight members of the Board of Governors, including the Treasurer;
    - 2) the President;
    - 3) the President-elect; and
    - 4) the Immediate Past President.

The chair of the Committee shall be selected by the President from among the Governors appointed to the Committee.

- c. Procedure: Consideration of legislation by the Committee shall proceed in the following order:
  - 1) The Committee shall first determine, by a two-thirds majority vote of those voting, whether the legislation is within the scope of GR 12.1 and whether it is appropriate under the circumstances for the Committee to determine a position on the legislation on behalf of the Board of Governors.
  - 2) If the determination in subsection (1) above is affirmative, then the Committee shall determine by a two-thirds majority vote of those voting what position, if any, to adopt on the legislation on behalf of the Board of Governors.

- 3) The Committee may determine that major or novel legislative issues will be referred to the Board of Governors for consideration.
- 4) Any issues to be considered or actions taken by the Committee shall be promptly communicated to the Board of Governors by electronic delivery; and actions taken by the Committee shall also be communicated at the next meeting of the Board.
- 5) Due to the Committee's unique need to be able to act quickly to address issues that arise during a regular or special legislative session, between meetings the Committee may discuss and vote on issues by e-mail; however, if any Committee member objects to using an e-mail process for any particular issue, the Committee shall take up that issue at its next scheduled Committee meeting.

d. Quorum: A quorum shall consist of a majority of the Committee's voting members.

e. Committee Meetings: The Board of Governors Legislative Committee may meet in executive session, with no persons present except the members of the Committee, other members of the Board of Governors, the Executive Director, the Legislative Liaison, and such others as the Committee may authorize. Committee meetings may be held electronically.

#### D. POLITICAL ACTIVITY.

##### 1. Board of Governors.

- a. The Board of Governors acting as a Board shall not publicly support or oppose, in any election, any candidate for public office.
- b. The Board of Governors acting as a Board shall not take a side or position publicly or authorize any officer or the Executive Director to take a side or position publicly on any issue being submitted to the voters or pending before the legislature, unless the matter is considered in public session at a meeting of the Board with advance notice to the Bar's membership, and the following requirements are met:
  - 1) The Board shall first vote to determine whether the issue is within the scope of GR 12.1; and
  - 2) If the Board determines that the matter is within the scope of GR 12.1, then the Board shall vote to determine what position, if any, to adopt on the issue.
- c. The restriction applies fully to prohibit:
  - 1) the use of the name or logo of the Washington State Bar Association;



- 2) the contribution of funds, facility use, or Bar staff time;
  - 3) participation or support to any degree in the candidate's campaign, or the campaign on either side of the issue.
- d. The restriction does not apply to matters that are exclusively related to the administration of the Bar's functions or to any issue put to a vote of the Bar's membership.

Notice of any Board position or authorization to the President or Executive Director to take a position shall be published on the Bar's website as soon as possible after the meeting at which the final action is taken.

## 2. President and President-elect.

The President and President-elect shall not publicly support or oppose, in an election, any candidate for public office. This restriction applies fully to prohibit:

- a. the use of the President's and President-elect's name,
- b. the contribution of funds, or
- c. participation or support to any degree in the candidate's campaign.

Further, the President and President-elect shall not take a side publicly on any issue being submitted to the voters, pending before the legislature or otherwise in the public domain except when specifically authorized or instructed by the Board of Governors to do so on a matter relating to the function or purposes of the Bar.

## 3. Governors, other Officers and Executive Director.

Governors, other officers, and the Executive Director shall not publicly support or oppose, in an election, any candidate for public elective office in the State of Washington the prerequisites for which include being an attorney, except where the candidate is a member of that person's immediate family. This restriction applies fully to prohibit:

- a. the use of the Governor's, officer's, or Executive Director's name,
- b. the contribution of funds, or
- c. participation or support to any degree in the candidate's campaign.

The term "immediate family" as used in this Article includes a sibling, parent, spouse, domestic partner, child and the child of a spouse or domestic partner.

## 4. Other.

If any officer, Governor, or the Executive Director supports or opposes any candidate or issue as permitted in this Bylaw, then that person shall not state or

imply that he or she is acting in his or her capacity as officer, Governor or Executive Director of the Washington State Bar Association unless specifically authorized to do so by the Board of Governors.

5. Letterhead.

Use of Bar letterhead shall be limited to official business of the Bar and specifically shall not be used for personal or charitable purposes, or in connection with any political campaign or to support or oppose any political candidate. Bar letterhead shall not be used to support or oppose any public issue unless the Board of Governors has taken a position on the issue.

E. REPRESENTATION OF THE BAR.

Except as specifically set forth in these Bylaws, no committee, section, task force, or WSBA entity, or member thereof, member of the BOG, or officer or employee of the Bar shall assume to speak for or represent the Bar, or any committee, section, task force, or entity thereof, before any legislative body, in any court, before any other tribunal or in any communication to the Governor or the Attorney General of the State, unless prior authorization to do so has been specifically granted by the BOG.

1. As the chief spokesperson of the Bar, the President has the authority to take action to execute the policies established by the Board of Governors, and to serve as the representative of the Bar in connection therewith.
2. The BOG Legislative Committee is specifically authorized, under the terms of these Bylaws, to propose or adopt positions on behalf of the BOG with respect to legislation that has been introduced or is expected to be introduced in the Washington State Legislature, including the authority to propose amendments to legislation or to adopt positions on amendments to legislation.
3. The Executive Director may communicate with Bar members, the judiciary, elected officials, and the community at large regarding Bar matters and policies established by the BOG, and is not required to obtain prior approval from the BOG before doing so.
4. WSBA employees whose job duties require them to do so, and independent counsel retained at the direction of the President or the BOG, are specifically authorized to represent the WSBA, or any committee, section, or task force thereof, before any legislative body, in any court, before any other tribunal or in any communication to the Governor or the Attorney General of the State as may be necessary to perform their job duties.

***V. APPROPRIATIONS AND EXPENSES***

A. APPROPRIATIONS.

Appropriations of WSBA funds and authorization for payment of expenses shall be made

2. Each qualified indemnitee who is a party to, or is threatened to be made a party to, or is involved in any threatened, pending, or completed claim, action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that the indemnitee, or a person of whom the indemnitee is a legal representative, is, or was, an officer or member of the Board of Governors, member of the staff of the Bar, or a member of a board, committee, task force, or other WSBA entity formed by the Board of Governors, shall be defended, indemnified, and held harmless by the Bar against all expenses, liability, and losses (including, but not limited to, attorneys' fees, judgments, fines, and amounts paid in settlement) reasonably incurred or suffered by the indemnitee in connection therewith. The Board of Governors shall have the right, as a condition of granting indemnification, to approve in advance the choice of counsel as well as any settlement by the person requesting indemnification. The Board shall not unreasonably withhold its approval.

B. CUMULATIVE, NON-EXCLUSIVE RIGHT.

The indemnification provided by this Article shall not be deemed exclusive of any other rights to which any person seeking indemnification may be entitled under law or under any bylaw, agreement, vote of the Board of Governors or members of the Bar, or otherwise.

***XVI. KELLER DEDUCTION***

As a mandatory bar association, the Bar may not use compulsory license fees of any member who objects to that use for political or ideological activities that are not germane, or reasonably related, to regulating the legal profession or improving the quality of legal services. *Keller v. State Bar of California*, 496 U.S. 1 (1990). These activities are considered "nonchargeable." The Bar may use compulsory membership fees for all other activities.

- A. Under Keller, the Bar is required to identify that portion of mandatory license fees that go to "nonchargeable" activities and establish a system whereby objecting members may either deduct that portion of their fees or receive a refund. The WSBA shall calculate the Keller deduction prospectively for each fiscal year, using that fiscal year's budget and the actual activities of the Bar during the prior fiscal year. The process to be followed in calculating the Keller deduction shall be as set forth in the Keller Deduction Policy. When calculating the Keller deduction, the Bar shall use a conservative test for determining whether an individual activity is chargeable or nonchargeable. When in doubt, the Bar shall err in favor of the membership by considering activities to be nonchargeable even when a reasonable argument could be made that such activities were chargeable.
- B. Notice of the amount of the Keller deduction shall be included with the annual licensing information provided to members, and detailed information regarding the calculation of the deduction shall be posted on the WSBA website. Members admitted to the Bar during the course of a year shall be advised of this notice with

their initial fee statements. Such members may demand arbitration within 45 days following receipt of the notification. If arbitration is pending at the date of delivery of a demand for arbitration submitted pursuant to this paragraph, 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.

- C. Except for requests for arbitration submitted by newly admitted members pursuant to Paragraph (B) above, any member requesting arbitration of the calculation of the amount of the Keller deduction for a licensing year shall deliver a written request for arbitration to the Executive Director on or before February 1 of the licensing year in which the deduction is being challenged. 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, identifying each challenged activity with such specificity as to allow the WSBA to respond, and the signature of each objecting member.
1. Within 14 days of receipt of a timely demand for arbitration, the Bar shall submit the matter to the Chief Justice of the Washington Supreme Court for appointment of an impartial arbitrator.
  2. All timely demands for arbitration, including any timely demands received after submission of one earlier received, shall be consolidated.
  3. A member demanding arbitration is required to pay his or her license fee and assessments, excepting the amount in dispute, on a timely basis as otherwise required by the WSBA bylaws. Failure to pay the fees and assessments, other than the amount in dispute, by the requisite date may result in suspension as provided by the WSBA bylaws or applicable court rules.
  4. Unless the parties agree to a different schedule, a hearing shall be held within 30 days of the appointment of the arbitrator. The arbitrator shall determine the date, time, and location of the arbitration hearing(s) and shall so notify the parties at least 15 days prior to said hearing(s).
  5. The burden is on the member(s), as a condition of arbitration, to identify each challenged activity with such specificity as to allow the Bar to respond. The burden is on the Bar to establish the accuracy of the determination of the *Keller* calculation. Members demanding arbitration shall have access to the financial records upon which the Bar based the determination of the amount of fee 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.
  6. At the hearing(s) the parties will be permitted to participate personally or through counsel admitted to practice in the state of Washington. All parties

will be given the opportunity to present evidence and to present arguments in support of their positions. The following rules shall apply to the arbitration proceedings:

- a. There will be no transcripts or post-hearing briefs; except, however, post-arbitration motions for reconsideration or clarification are permitted.
  - b. The arbitrator will issue a written opinion, stating the reasons for the decision, within 14 days of the close of the hearing. The opinion will be brief and will be based on the evidence and arguments presented.
  - c. The arbitrator shall be compensated at an hourly rate established pursuant to BOG policy for the hearing, preparation, and study time, and shall be reimbursed for all necessary expenses of the arbitration. The Bar will pay for the arbitrator's services.
  - d. The arbitration is not a judicial proceeding but is *sui generis*. Except for production of documents as set forth in Paragraph 5 above, or as may be stipulated to by the parties, there is no discovery, and the civil rules, arbitration rules, rules of evidence, and other court rules shall not apply.
7. The arbitrator shall have no authority to add, subtract, set aside, or delete from any Supreme Court Rule or WSBA Bylaw.
  8. The scope of the arbitration is limited to reviewing the challenged activities specified for the purpose of determining whether the Bar has correctly calculated the *Keller* deduction, and the sole relief potentially available through arbitration is a change in the amount of the named parties' *Keller* deduction for that licensing year.
  9. The arbitration shall be binding and the decision of the arbitrator final, with no right of trial de novo or appeal

#### ***XVII. AMENDMENTS***

- A. These bylaws may be amended by the Board at any regular meeting of the Board, or at any special meeting of the Board called for that purpose under the terms of these bylaws.
- B. All proposed bylaw amendments must be posted on the WSBA website and presented for "first reading" at least one Board meeting prior to the meeting at which the Board votes on the proposed amendment, and the Board shall not vote on any proposed bylaw amendment at the meeting at which the amendment is originally proposed, except as may be allowed below.
- C. For good cause shown under exceptional circumstances these bylaws may be

amended on an emergency basis, without the prior notice required above, by an affirmative vote of two-thirds of the Board; however, any such amendment shall be effective only until notice is given and a vote taken pursuant to the procedures set forth above.

- D. Notice of all bylaw amendments adopted by the Board shall be prominently posted on the WSBA website within 14 days of the Board's vote on the amendment.

