

# Membership Fee Guidelines

The West Virginia State Bar is a unified Bar in which membership and fees are compelled by state law and Order of the West Virginia Supreme Court of Appeals as a condition of practicing law.

Annual membership fees are used to finance the State Bar's broad statutory mission to promote the administration of justice. To this end, the State Bar has engaged in many different activities and functions.

In the case of *Keller vs. State Bar of California*, 110 S.Ct. 2228 (1990), the United States Supreme Court held that a unified state bar may constitutionally use mandatory fees for expenditures that are necessarily or reasonably incurred for the purpose of regulating the legal profession or improving the quality of legal services available to the people of the state. However, objecting members may not be compelled to pay for the expenses of political activities or promoting ideological causes which are reasonably related to the advancement of such goals.

In *Keller*, the Supreme Court indicated that adoption of certain procedures would be necessary to accommodate objecting members. The procedures described below follow the due process requirements for the collection of compulsory fees:

1. Adequate explanation of the basis of the fee.
2. Reasonably prompt opportunity to object and have objections heard before an impartial decision maker.
3. Escrow of amounts reasonably in dispute pending adjudication of the challenge.

The Board of Governors of The West Virginia State Bar has the responsibility for determining which expenditures meet the Bar's basic mission (such expenditures are hereinafter referred to as "chargeable" in accordance with the *Keller* decision) and which expenditures are for activities which are not within the purview of the Bar's basic mission (such expenditures are hereinafter referred to as non-chargeable" in accordance with the *Keller* decision). A member who objects to non-chargeable activities is given an opportunity to reduce his/her annual membership fee by the amount of the allotted portion of the non-chargeable expenditures (this reduction is hereinafter referred to as the "*Keller* Deduction").

All but a small portion of State Bar expenditures are necessarily or reasonably related to the regulation of the legal profession or improving the quality of legal service and, therefore, are chargeable to all members. A listing by major categories of these chargeable activities will be done by the State Bar's Board of Governors. Expenditures pursuant to that listing will be audited by an independent public accounting firm.

A member who does not wish to support any activities determined to be non-chargeable may elect to pay a reduced membership fee amount, i.e. the *Keller* Deduction. The election must be made by the member and the reduced membership fee paid within the normal required time frame for paying State Bar fees.

Objecting members are also given an opportunity to dispute the accuracy of any of the categories of chargeable expenses on the grounds that a challenged category is not sufficiently related to the State Bar's purpose of regulating the profession or improving the quality of legal services to justify the use of mandatory fees or that the expense calculated for the category was erroneous. (A member who wishes to make such a challenge is hereinafter referred to as a "challenger.") A challenger must make his/her challenge individually and in writing. The written challenge must include the challenger's name, address, phone number and Bar membership number and must identify specifically the challenged category. A challenger must sign the challenge and submit it, along with payment of the membership fee, less only the *Keller* Deduction, by no later than July 15 of the applicable statement year.

Upon receipt of a properly submitted and timely challenge, the State Bar shall place in an escrow account the amount representing the pro rata share of the challenger's fee for the disputed expense pending resolution of the challenge.

At its July meeting, the Board of Governors shall decide whether to give a pro rata refund to the challenger or to submit the dispute for expeditious arbitration before an impartial arbitrator. If the dispute is submitted for arbitration, the American Arbitration Association will be requested to provide an impartial arbitrator. All challenges to the chargeable fee will be consolidated into a single arbitration proceeding. The arbitration shall be heard at the State Bar office in Charleston, West Virginia. The proceedings shall be informal in nature, and the State Bar shall have the burden to show that the disputed matters are within the scope of permissible activities for which mandatory fees may be used under the constitutional standard in the *Keller* case. The challenger will be given an opportunity to present his/her own evidence and to present written arguments in support of the challenge.

The arbitrator shall review the testimony, arguments and written materials and issue a written decision and award within 30 days of the date of the hearing.

## **KELLER CASE CHARGEABLE AND NON-CHARGEABLE EXPENSES**

### **Chargeable Expenses**

1. Legal Ethics
2. Mandatory Continuing Legal Education
3. Lawyers Fund for Client Protection
4. Bar Relations
5. Young Lawyers Section
6. Board of Governors Meetings
7. Communications and Public Affairs
8. Annual Meeting
9. Committee Activities
10. Governmental Affairs (Other than that portion of such expenditures attributable to political or ideological activities which are not necessarily or reasonably incurred for the purpose of regulating the legal profession or improving the quality of legal services.)
11. Professionalism and Competency
12. Lawyer Assistance Program
13. Legal Outreach Services
14. General and Administrative Expenses

## **Non-Chargeable Expenses**

1. Governmental Affairs (That portion of such expenditures attributable to political or ideological activities which are not necessarily or reasonably incurred for the purpose of regulating the legal profession or improving the quality of legal services.)
2. American Bar Association Delegate -Travel Costs
3. Judicial Evaluations