

AGENDA ITEM

112 March

DATE: February 14, 2012

TO: Members, Board Committee on Operations
Members, Board of Trustees

FROM: Starr Babcock, General Counsel
Lawrence Yee, Chief Assistant General Counsel
Dina Goldman, Senior Assistant General Counsel

SUBJECT: Keller Challenge of McLaughlin

EXECUTIVE SUMMARY

The State Bar's procedures allow members to challenge any part of the mandatory membership fees on grounds that the money is used to fund activities outside of the standard of *Keller v. State Bar of California*, 496 U.S. 1 (1990). A member, Matt McLaughlin, submitted a challenge and requested a full refund of his membership fees, stating that the Bar spends all its money to support "Anti-Bias" activities. As the explanation provided to members on the programs and activities that are funded by mandatory membership fees shows, no part of the annual dues are used to support any category of activities described as "anti bias." Activities such as those in the Bar Relations and Elimination of Bias program are solely funded by the revenues received from those members not taking the deduction offered to members who do not wish to support these programs and other voluntary fees. For 2012 there was a total of \$30 in deductions, which Mr. McLaughlin took. This item recommends that the Board reject Mr. McLaughlin's challenge.

BACKGROUND

Under *Keller v. State Bar of California*, 496 U.S. 1 (1990), the State Bar may use mandatory membership fees to fund activities germane to either regulating the legal profession or improving the quality of legal services to the people of California. Each year, in order to permit members to gauge the propriety under *Keller* of the annual membership fee that they are charged, the State Bar must provide an explanation of the programs and activities funded by the annual membership fee. *Keller*, 496 U.S. 17, citing *Teachers v. Hudson*, 475 U.S. 292 (1986). Along with the fee statements sent to members for the fees charged in 2012, the Bar provided a Statement of Expenditures of Mandatory Membership Fees and Independent Auditor's Report for the year ended December 31, 2010 ("Membership Fees Statement.") 2010 was used to provide

information for the Membership Fees Statement because it was the last year for which audited financial information was available. The Membership Fees Statement details all categories of expenses on which the Bar will spend mandatory membership fees.

The Membership Fees Statement also explains that members are not required to pay for the support of specified programs and activities. For the 2012 membership fees, members may take one \$5 deduction if they do not wish to support the Bar's lobbying activities and a second \$5 deduction if they do not wish to support the Bar's activities in Bar Relations and Elimination of Bias. In 2012, an additional deduction of \$20 was provided to members who elect not to have this amount allocated to the Temporary Emergency Legal Services Voluntary Assistance Option, which would be used to support programs providing legal services to the poor. Expenditures for all these activities are limited to the amount the Bar receives from members who do not take the specified deductions. As a result, no part of mandatory membership fees charged to members are used to fund nonchargeable expenses.

The Bar's procedures allow members to challenge the mandatory membership fees explained in the Membership Fees Statement by submitting a challenge to a category or categories of chargeable expenditures. Rules of State Bar rule 2.17. Members must submit such a challenge on a form provided and with full payment of fees, less only the deductions for lobbying or Bar Relations and Elimination of Bias. The challenges of members to chargeable categories of expenditures are considered by the Board of Trustees, who either provide an additional deduction to members or submit the matter to arbitration. Challenge To Mandatory Membership Fees, Procedures ¶ 2.

Matt McLaughlin, a member, has submitted a challenge and requested a full refund of his membership fees, specifying the category he was challenging as "Anti-Bias" and stating that the Bar spends all its money on these activities. Mr. McLaughlin took the two \$5 deductions as well as the \$20 deduction allowed for members who do not wish to support legal services for the indigent. After taking the total \$30 in deductions plus the one-time \$10 rebate provided to members under Business and Professions Code section 6140, subdivision (a), Mr. McLaughlin submitted his challenge with payment of \$370 for his annual membership fees.

While the Bar's procedures allow members to challenge categories of mandatory membership fees that they feel do not meet the *Keller* test, the category specified by Mr. McLaughlin on his challenge form, "Anti- Bias" does not appear on the Membership Fees Statement at all. Funding of all of the Bar's activities in the area of Elimination of Bias is restricted to fees generated by members who choose not to take the \$5 deduction in this area or other voluntary sources. This voluntary funding is explained in the Membership Fees Statement. Therefore, Elimination of Bias is never included in the mandatory fee charged to members and doesn't appear as a category of chargeable expenditures.

ISSUE

Should the Board of Trustees consider Mr. McLaughlin's Challenge to Mandatory Membership Fees or reject it as improper?

CONCLUSION

Mr. McLaughlin's Challenge to Mandatory Membership Fees should be rejected as improper because it challenges a category that does not appear in the Membership Fees Statement.

DISCUSSION

Since the State Bar funds all activities in the area of Elimination of Bias with voluntary fees, this category does not appear as an area of chargeable expenditures on the Membership Fees Statement. Mr. McLaughlin took the \$5 deduction offered to members who do not wish to support Elimination of Bias activities and therefore he is not funding these activities with his mandatory dues. His challenge is improper because it challenges a category of expenditures that does not appear in the Membership Fees Statement and for which he received a deduction.

FISCAL / PERSONNEL IMPACT:

None.

RULE AMENDMENTS:

None.

BOARD BOOK IMPACT:

None.

RECOMMENDATION

Staff recommends that the Board of Trustees reject Mr. McLaughlin's challenge.

PROPOSED BOARD COMMITTEE RESOLUTION:

Should the Board Committee on Operations agree with the above recommendation, the following resolution would be appropriate:

RESOLVED, that the Board Committee on Operations recommends that the Board reject the Challenge to Mandatory Membership Fees submitted by Matt McLaughlin.

PROPOSED BOARD OF TRUSTEES RESOLUTION:

Should the Board concur with the Board Committee on Operations's recommendation, the following resolutions would be in order:

RESOLVED, that upon the recommendation of the Board Committee on Operations, the Board hereby rejects the Challenge to Mandatory Membership Fees submitted by Matt McLaughlin.