

AGENDA ITEM

115 MAY13

DATE: April 16, 2013

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

FROM: Starr Babcock, General Counsel
Dina E. Goldman, Supervising Sr. Asst. General Counsel

SUBJECT: Keller Challenge of Nelson-Holmdahl

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, Susan L. Nelson-Holmdahl, submitted a challenge to "all" the membership fees and requested a full refund of her membership fees. The explanation provided to members on the programs and activities that are funded by mandatory membership fees describes categories of expenditures that are funded with mandatory fees. Additional activities, including Bar Relations and Elimination of Bias and Legislation, are solely funded by voluntary fees, including the revenues received from members who opt not to take the deductions in membership fees offered to those who choose not to support these programs. For 2013 there was a total of \$30 in voluntary deductions for potentially nonchargeable activities, all of which Ms. Nelson-Holmdahl took. This item recommends that the Board reject Ms. Nelson-Holmdahl's challenge because she failed to identify any particular category or categories of expenditures.

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 2013, the Bar provided a Statement of Expenditures of Mandatory Membership Fees and Independent Auditor's Report for the year ended

December 31, 2011 ("Membership Fees Statement.") 2011 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 2013 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 2013, an additional deduction of \$20 was provided to members who elected 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 of these voluntary deductions, no part of mandatory membership fees charged to members are used to fund nonchargeable expenses.

The Bar's procedures allow members to challenge expenditure of mandatory membership fees explained in the Membership Fees Statement that they believe are disallowed by *Keller v. State Bar* by submitting a challenge to a category or categories of chargeable expenditures. Rules of the State Bar, rule 2.17, subdivision (A). 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.

Susan Nelson-Holmdahl, a member, has submitted a challenge and requested a full refund of her membership fees, but failed to specify any specific category or categories of expenditures that she wished to challenge, rather indicating "all" in the space to detail the category or categories being challenged. Ms. Nelson-Holmdahl 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, Ms. Nelson-Holmdahl submitted her challenge with payment of her 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, Ms. Nelson-Holmdahl's challenge does not specify any category of expenditures that she wishes to challenge. She did take all available voluntary deductions for activities that the Bar has determined are nonchargeable to members who do not wish to fund these activities.

ISSUE

Should the Board of Trustees consider Ms. Nelson-Holmdahl's Challenge to Mandatory Membership Fees or reject it as improper?

CONCLUSION

Ms. Nelson-Holmdahl's Challenge to Mandatory Membership Fees should be rejected as improper because it fails to describe a specific category or categories listed in the Membership Fees Statement.

DISCUSSION

Ms. Nelson-Holmdahl took all the available voluntary deductions from her 2013 membership fee, for a total of \$30. These deductions are offered to members who do not wish to support certain State Bar activities that may be considered nonchargeable. While the State Bar Rules also provide that Ms. Nelson-Holmdahl may challenge expenditure of mandatory membership fees explained in the Membership Fees Statement that she believes are disallowed by *Keller v. State Bar*, her challenge fails to identify a specific category or categories of chargeable expenditures. A general objection to *all* categories of expenses and activities that the State Bar has deemed as falling within the parameters of *Keller* is insufficient. While a member is not required to make a specific objection that may disclose his or her own personal beliefs, the objection must identify which category of activity is disputed and some brief statement as why it falls outside of the State Bar's core functions. *Schneider v. Colegio de Abogados de Puerto Rico*, 917 F.2d 620, 635 (1st Cir. 1990), citing *Abood v. Detroit Board of Education*, 431 U.S. 209, 241. Since Ms. Nelson-Holmdahl has not challenged any specific category of expenditure, her challenge should be denied.

FISCAL / PERSONNEL IMPACT:

None.

RULE AMENDMENTS:

None.

BOARD BOOK IMPACT:

None.

RECOMMENDATION

Staff recommends that the Board of Trustees reject Ms. Nelson-Holmdahl'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 Susan Nelson-Holmdahl; and it is

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 Susan Nelson-Holmdahl.