

Utah State Bar Legislative Activity and *Keller* Refund Policy.

It is the policy of the Bar to carry out legislative activities and public policy actions related to the practice of law and the administration of justice as authorized by Keller v. State Bar of California, 496 U.S. 1 (1990). The Utah Supreme Court authorizes the Bar to engage in legislative activities described in Rule 4-106 of the Supreme Court Rules of Professional Practice.

1. Scope of Issues for Committee Consideration.

The Board may take a position on policies or legislation concerning the regulation of the practice of law, the administration of justice and access to the courts. Examples of areas on which the Board may take a position include, but are not limited to:

a. The Judiciary.

- (1) Appointment of judges.
- (2) Judicial compensation.
- (3) Judicial oversight and qualification.
- (4) Legislative requests to add judges to districts or specific functions.
- (5) Independence of the judiciary.

b. The Courts.

- (1) Issues involving the organization or re-organization of the courts of this state.
- (2) Issues involving resources for the courts.
- (3) Issues affecting the administration of justice.

c. Access.

Issues affecting an individual's right to seek legal or judicial redress.

d. Practice of Law.

(1) Issues involving the qualifications of those authorized to provide legal services in the State and the public's access to legal services.

(2) Issues involving the regulation of the legal profession, including the education, the ethics, the competency, and the integrity of the profession.

2. Governmental Relations Committee.

The Governmental Relations Committee is established to assist the Bar in carrying out its legislative activities, to review and analyze pending legislation and to provide politically neutral technical assistance to legislators.

3. Role of Governmental Relations Committee.

Recommendations for positions on legislation will be presented to the Board through its Governmental Relations Committee and other interested committees and sections of the Bar.

4. Weekly Telephonic Meetings During Session.

During the legislative session, the Board will hold regularly scheduled weekly conference calls to discuss issues and take positions on legislation.

5. Supermajority Voting Requirement.

The Board will not take a position on legislation unless it is supported by a two-thirds vote of those present. Board positions must also be consistent with Keller v. State Bar of California, 496 U.S. 1 (1990).

6. Interim Positions by President or President-elect.

In the event that it is not reasonable and practical to wait for the next scheduled regular or telephonic Board Meeting, the President, or the President-elect in the President's absence, may, upon the recommendation of the chair of the Governmental Relations Committee and the Governmental Relations Representative, take a position on legislation on behalf of the Board. Those positions will be reported immediately by e-mail to all Board members.

7. Representation of the Bar and Policy Formation.

- a. The Board must formulate and express the policy of the Bar, subject to the limitations of Keller v. State Bar of California, 496 U.S. 1 (1990) and the scope of issues set forth in these Policies.

Except as provided by policy or specifically authorized by the Board no other member or employee of the Bar may represent the Bar.

- b. Sections and committees.

Sections and committees of the Bar may not take official positions on substantive legislation except to the extent that the legislation affects the practice of law or the administration of justice, as provided in Keller v. State Bar of California, 496 U.S. 1 (1990) and the Board has taken an official position.

- i. Unless specifically authorized by the Board to appear on behalf of the Bar before the public or before any legislative body, a member of a section or

committee shall make clear that he or she does not represent the Bar and is appearing in a personal capacity.

- ii. If the member of a section or committee permits him or herself to be identified as having an official connection with the Bar or one of its committees or sections when appearing before the public or before a legislative body, such section member shall fairly state the policy of the Bar on the matter in question if a policy has been adopted.
- iii. If the section member expresses views at variance with any such policy, the member shall clearly identify the variance as the member's personal views only. If the Bar has not formulated a policy on the matter in question, or if the section member has no knowledge of any such policy, the section member shall nevertheless identify utterances on the subject as the section member's personal views.
- iv. Members of a section or committee may meet to propose changes in the law or to propose changes to legislation. In presenting those changes to a legislative body, the section member may state that members of the section or committee have been involved in the effort to address the legislation but may not state that the person is presenting the official position of the section or committee. The section member must state that they are presenting their personal views.

8. Rebate of Licensing Fees Allocated to Legislative Activities and Public Policy Actions Related to the Practice of Law and the Administration of Justice.

a. Notice of Expenditures and Availability of Rebate

At the end of each annual legislative session the Bar will place a notice in the next Bar Journal and in the e-bulletin giving licensees notice of the availability of a rebate for legislative and public policy expenditures as determined by the Board and instructions for claiming the rebate. Positions taken by the Bar will also be available on the Bar's website.

b. Calculation of Rebate

Any Bar licensee may apply for a license fee rebate in an amount representing that member's *pro rata* portion of the amount of the licensee's licensing fees spent on legislative activities for the preceding 12-month period. That *pro rata* portion is determined by dividing the total amount spent on legislative activities into the total amount of license revenue collected to date and multiplying that dividend by the licensing fees paid by the licensee. The calculation is made on or about April 1st. Applications for a rebate can be made by notifying the Director of Finance at Finance@utahbar.org. The rebate request must be made within 45 days of publication of the notice in the *Bar Journal*.

c. ABA Delegates

The Utah State Bar pays for both the State and Bar ABA Delegates to travel to ABA meetings to report to the Bar on issues relevant to the Utah State Bar. Bar expenditures for the Utah and the Utah State Bar American Bar Association (ABA) Delegates' activities in the ABA House of Delegates are be

included in the annual rebate amount. Licensees will also be offered a rebate for Bar expenditures for the annual ABA Day in Washington D.C. by ABA Delegates and Bar volunteers.

Prior to each ABA House of Delegate meeting, the Bar's BA Delegates will meet with the Executive Director and General Counsel to review all resolutions that will be presented for a vote to determine if the delegates must recuse taking a position on the resolution on *Keller* grounds. The General Counsel maintains a list of the resolutions and the recusal list.

9. Objections

a. Written Notice

A Bar licensee who objects to the use of any portion of the licensee's license fees for activities he or she considers promotes or opposes political or ideological causes which are not already included in the rebate may request the Board to review the licensee's objections. Licensee objections must be in writing and submitted by mail to the Executive Director of the Bar within 45 days of the Bar giving notice of the rebate in the *Bar Journal*. The Board will review each written objection received by the Executive Director at its next regularly scheduled board meeting following receipt of the objection. The Board will respond through the Executive Director in writing to each objection. The Board's response will include an explanation of the Board's reasoning in agreeing or disagreeing with each objection.

b. Refund

If the Board agrees with the licensee's objection, it will immediately refund the portion of the licensee's dues that are attributable to the activity, with interest paid on that sum of money from the date the licensee's fees were received to the date of the refund. The statutory rate of interest will be used. If the Board disagrees with the licensee's objection, it will immediately offer the licensee the opportunity to submit the matter to binding arbitration between the Bar and objecting licensee. The licensee must submit a letter agreeing to arbitration within 30 days of the Board's offer to submit the matter to binding arbitration. Delivery may be made in person, email to the Executive Director or by first-class mail and mailed demands will be deemed delivered upon mailing. The Executive Director and the member must sign an arbitration agreement approved as to form by the Board. The matter must be submitted to an arbitrator within 60 days after the arbitration agreement is signed.

c. Arbitration

If an objecting licensee agrees to binding arbitration, the parties will select an arbitrator from the list of court approved arbitrators for the United States District Court for the District of Utah. The Bar and the objecting licensee may each strike one name and then rank the remaining arbitrator candidates in order of preference with one (1) being the first preference. The arbitrator candidate with the highest composite ranking will be appointed to arbitrate. If the arbitrator selected is unable to fulfill the arbitrator's duties, the arbitrator from the list with the second highest composite ranking will be chosen as arbitrator.

Similar or related objections to Bar expenditures on legislative or public policy issues, by agreement of the parties, may be consolidated for hearing before one arbitrator. The arbitrator will be compensated at an hourly rate established pursuant to Utah State Bar policy for the hearing, preparation, and study time, and will be reimbursed for all necessary expenses of the arbitration.

d. The Hearing

The arbitrator will promptly arrange for an informal hearing on the objection, which may be held at the Law and Justice Center or at another location in Utah that is acceptable to the parties and the arbitrator. The hearing will be limited to the presentation of written information and oral argument by the Bar and the objecting licensee. The arbitrator will not be bound by the rules of evidence. The presentation of witnesses will not be part of the hearing process, although the arbitrator may ask the Bar representative and the objecting licensee and his or her lawyer, if any, questions. The hearing may be reported, but the expense of reporting must be borne by the party requesting it. The Bar and the objecting licensee may submit written material and a legal memorandum to the arbitrator no later than seven days before the hearing date. The arbitrator may request additional written material or memoranda from the parties. All written material and memoranda must be provided to the other party at the same time it is submitted to the arbitrator.

e. The Decision

The arbitrator will promptly decide the matter applying the standard set forth in Keller v. State Bar of California, 496 U.S. 1 (1990), to the expenditures to

which the licensee objected. The scope of the arbitrator's review must solely be to determine whether the matters at issue are acceptable activities for which compulsory fees may be used under applicable constitutional law. In making his or her decision, the arbitrator must apply the substantive law of Utah and the United States Federal Courts.

The arbitrator must file a written decision with the Executive Director within 14 days after the hearing. The arbitrator's decision will be final and binding on the parties. If the arbitrator agrees with the licensee's objection, the Bar will immediately refund the portion of the licensee's fees that are reasonably attributable to the activity, with interest paid at the statutory rate paid on the amount from the date of the licensee's fees were received to the date of the Bar's refund. If the arbitrator agrees with the Bar, the licensee's objection is denied, and the matter is closed. If the arbitrator agrees with the Bar, the licensee must pay all costs associated with engaging the arbitrator.