

# WASHINGTON STATE BAR ASSOCIATION

**TO:** WSBA Budget and Audit Committee  
**FROM:** Jorge Perez, Chief Financial Officer  
**DATE:** August 10, 2020  
**RE:** Sweep Account

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**ACTION/DISCUSSION :** Decide on whether to discontinue the nightly sweep of our operations account located at Wells Fargo

Interest rates in the US are very low and will likely continue this way for the foreseeable future. WSBA currently has an investment sweep service with Wells Fargo. Currently it is paying 0% return, in light of the Wells Fargo has waived all service fees, so as to not erode our principal. Given the current rate environment, the bank has outlined some suggestions. WSBA has 2 options:

1. Leave things as is – 0% and \$0 fee for sweep
2. Turn off the sweep and leave the funds in the account-our account earns 16bps on collected balances, but is charged 15bps for FDICrecoupment on ledger balances. So net is roughly 0bps to 1bps yield.

Option 2, assuming our average daily balance of \$1,500,000 and a maximum yield of 1 bps (.0001) of \$150 dollars.

While the amount is minimal, these are member funds and require us to maximize albeit minimal our cash holdings.

# WASHINGTON STATE BAR ASSOCIATION

To: The President, President-elect, and The Board of Governors

From: Terra Nevitt, Interim Executive Director  
Jorge Perez, Chief Financial Officer  
Julie Shankland, General Counsel

Date: August 7, 2020

Re: FY 2021 License Fee Deduction

**ACTION:** Approve 2021 Keller deduction schedule.

Each year the annual license fee form provides for an “optional Keller deduction” as approved by the Board of Governors. This is in response to the U. S. Supreme Court 1990 decision in *Keller v. State Bar of California*<sup>1</sup> holding that state bar mandatory fees may not be used over a member’s objection for activities that are *political or ideological in nature and which are not reasonably related to (1) regulating the practice of law, or (2) improving the quality of legal services*. In *Eugster v. WSBA*<sup>2</sup>, the court stated that “the WSBA provides robust procedural safeguards to ensure compliance with *Keller*.” On August 30, 2019, the U.S. Court of Appeals for the 8<sup>th</sup> Circuit issued a decision in *Fleck v. Wetch*<sup>3</sup>, holding that *Janus* did not overrule *Keller* and affirming that a procedure similar to WSBA’s *Keller* refund procedure remains constitutional.

General Rules 12-12.3 set out the Washington Supreme Court’s plenary authority over WSBA, its regulatory objectives for regulating the practice of law, and WSBA’s authorized and prohibited activities. GR 12.2(c) prohibits WSBA from (1) taking positions on issues concerning the politics or social positions of foreign nations; (2) taking positions on political or social issues which do not relate to or affect the practice of law or the administration of justice; or (3) supporting or opposing, in an election, candidates for public office.

**The amount of the Keller deduction represents the amount of license fees used for activities permitted under GR 12, but subject to deduction under *Keller*.**

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<sup>1</sup> *Keller v. State Bar of California*, 496 U.S. 1 (1990)

<sup>2</sup> *Eugster v. WSBA*, No. C15-0375JLR 2015 WL 5175722 (W.D. Wash Sept. 3, 2015), *aff’d*, 684 F.App’x 618 (9<sup>th</sup> Cir. 2017)

<sup>3</sup> *Fleck v. Wetch*, No. 16-1564 (8<sup>th</sup> Cir 2019)

## OVERVIEW OF OPTIONAL KELLER DEDUCTION CALCULATION

The optional Keller deduction amount is the sum of the following three numbers:

- (1) The actual direct and indirect costs of non-chargeable Legislative activities in the current fiscal year;
- (2) The budgeted cost for ABA delegate activities in the next fiscal year; and
- (3) The actual direct and indirect costs of other non-chargeable activities in the current fiscal year, including staff salary, benefits and overhead, including meeting time, conference call costs and overhead.

## LEGISLATIVE EXPENSE CALCULATION

We start by determining each license fee paying member's share of the entire legislative function budget. For FY 2021, the budgeted amount is \$161,611<sup>4</sup>. We divide this amount by the estimated total number of license fee paying members for 2021 (41,301) to arrive at each member's pro rata share (\$3.91).

$$\$161,611 \div 41,301 = \$3.91$$

We then reviewed a detailed list of the WSBA legislative staff's activity for the past year (FY 2020) to determine the proportion of the legislative budget spent on "non-chargeable" activities. We apply this percentage to the FY 2021 legislative budget. Attachment A is the detailed listing the legislative staff's activities for FY 2020. We reviewed each bill that the legislative staff spent time on and determined that 1788 was chargeable because it directly relates to regulating the legal profession. We determined that all of the remaining bills were non-chargeable because they do not relate directly to regulating the legal profession or improving the quality of legal services.<sup>5</sup> We included all time the legislative staff spent directly or indirectly on all bills other than 1788 in the "non-chargeable" calculation. This calculation also includes expenses related to legislative staff time spent during and preparing for BOG, BOG Legislative Committee and BOG Legislative Review Committee meetings. Part three of the Keller calculation captures the time ATJ and CPD spent on non-chargeable activities that were not directly related to legislation.

For FY 2020<sup>6</sup>, the non-chargeable percentage was 90.24%. The per member legislative expense of \$3.91 is multiplied by the percentage of non-chargeable activities (90.24%) to arrive at a per member cost of \$3.53.

$$(\$161,611 \div 41,301) \times .9024 = \$3.53$$

## ABA DELEGATION EXPENSE CALCULATION

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<sup>5</sup> These bills reasonably relate to or affect the practice of law or the administration of justice, so this activity complies with GR 12.2, but are appropriately subject to the *Keller* deduction.

<sup>6</sup> We use the actual expenses incurred in FY 2020 and apply those to the FY 21 budgeted amounts.

The ABA delegates take political positions, so we treat the entire ABA delegation budget (\$5,600) as non-chargeable. We divide the budgeted amount by the estimated total number of license fee paying members. The per member cost associated with the ABA delegation budget for FY 2021 is \$.14.

$$\$5,600 \div 41,301 = \$.14$$

#### **OTHER NON-CHARGEABLE EXPENSES/GENERAL STAFF TIME**

Finally, we review all other WSBA activities to identify other non-chargeable activities. This number is the total amount for staff time, including salaries, benefits, and overhead, BOG meeting time, including staff time, overhead, and conference call expenses not otherwise accounted for above, spent on meetings or activities involving legislative or political matters divided by the estimated total number of license fee paying members.

WSBA employees review FY 2020 meeting agendas and minutes and provide details of staff time and meeting expenses for activities that might be non-chargeable. The FY 2020 number includes staff time and meeting expenses for portions of Access to Justice Board and Committee meetings, Council on Public Defense Meetings, and Pro Bono and Public Service Committee meetings, including staff prep time. Attachment 2 is the detailed information used to prepare this calculation.

The total amount spent for staff time, overhead, and costs, including volunteer reimbursements for this category is \$5,736.64. We calculated the amount per member as \$.14.

$$\$5,736.64 \div 41,301 = \$.14$$

#### **KELLER DEDUCTION CALCULATION AND ROUNDING UP**

The *Keller* deduction is the sum of the amounts in #1, #2, and #3 above and results in a deduction of \$3.81 (\$3.53 + \$0.14 + \$0.14). We recommend rounding this number up for simplicity and ease in calculations. Therefore, we recommend that the Keller deduction for FY 2021 be set at **\$3.85**.

The comparison to previous years is shown in this table:

<b>YEAR</b>	<b>DEDUCTION</b>
2021	\$3.81
2020	\$1.55
2019	\$1.25
2018	\$2.50
2017	\$3.50
2016	\$6.40
2015	\$4.40
2014	\$4.70
2013	\$6.40
2012	\$6.00
2011	\$4.40
2010	\$3.95
2009	\$3.45
2008	\$3.15
2007	\$3.80
2006	\$2.14
2005	\$3.70
2004	\$1.94
2003	\$1.79
2002	\$1.70
2001	\$2.70
2000	\$2.22
1999	\$1.88
1998	\$1.50

Based on these calculations, we recommend the following Keller deduction schedule for 2020 pro-rated by the amount of license fee paid by various categories of WSBA membership:

	<b>License Fee</b>	<b>Keller Deduction</b>
• Active Lawyer Admitted to any Bar before 2018	\$458.00	\$1.55
• Active Lawyer Admitted to any Bar in 2018 or 2019	\$229.00	\$.78
• Inactive/Emeritus Lawyer	\$200.00	\$.68
• New Active Admittee (Jan 1-Jun 30)	\$229.00	\$.78
• New Active Admittee (July 1-Dec 31)	\$114.50	\$.39
• Limited Legal License Technician	\$200.00	\$.68
• Limited Practice Officer	\$200.00	\$.68
• Judicial	\$50.00	\$.17

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