

Oklahoma Bar Association Keller Policy

Notice and Objection Procedure to OBA Budgetary Expenditures

Adopted by OBA Board of Governors March 2 and 9, 2020.

1. Statement of Policy. The Oklahoma Bar Association ("OBA") may engage in and fund any activity that is reasonably intended to effectuate the purposes of the OBA, which are set forth in the Rules Creating and Controlling the Oklahoma Bar Association (the "Rules") and the OBA Bylaws (the "Bylaws"). The expenditure of funds by the OBA is also limited by *Keller v. State Bar of California*, 496 U.S. 1 (1990).

If any member has a reasonable belief that any actual or proposed expenditure is not within the purposes of the OBA, it is the policy of the OBA to provide a means by which a member may apply for a refund of the pro rata portion of his or her dues reasonably determined to be attributable to the activity complained of, as described below. No member exercising rights under this policy shall suffer any discrimination or retaliatory treatment as a result of exercising such rights.

2. Members May Object. A member may object to a proposed or actual expenditure of monies by the OBA as not within the purposes or limitations set out in the Rules or Bylaws, and seek refund of a pro rata portion of his or her dues expended, plus interest, by filing a written objection with the Executive Director. The objection must be made in writing, on the official OBA Dues Claim Form, addressed to the Executive Director of the OBA, P. O. Box 53036, Oklahoma City, OK 73152, or by email to JohnW@okbar.org.

A copy of the OBA Dues Objection Form may be obtained by written or in person request to the OBA Executive Director or from the OBA website [here](#). A member must submit his or her fully completed OBA Dues Objection Form in writing no later than 180 calendar days after the annual audit of the OBA is published on the OBA web site under 5(b), below. Any objection submitted more than 180 calendar days after the annual audit of the OBA is published on the OBA website, is untimely and will be rejected without further review.

3. Review and Determination of Objection.

(a) Upon receipt of a member's written objection on the official OBA Dues Objection Form, the Executive Director shall within 21 calendar days review such written objection, together with the allocation of dues monies to be spent on the activity or action and, in consultation with the OBA President, grant or deny the objection. If it is determined that the objection claim should be granted, then the Executive Director shall review OBA budget and expense records to calculate a refund to the objecting member reasonably determined to be the pro rata portion of the member's dues allocable to the activity complained of in the objection, plus interest from the date the member's dues were paid. Interest shall be paid at the interest rate for Oklahoma judgments for the calendar year in which the activity complained of occurred, as determined pursuant to 12 O.S. § 727.1(l).

(b)(1) The objecting member shall have 30 calendar days to accept or reject the Executive Director's determination of the member's objection. If the objecting member provides notice that he or she accepts the determination, or fails to respond to the determination of the Executive Director within 30 calendar days of notice of same, then the Executive Director's determination shall be deemed final.

(b)(2) If the objecting member contests the Executive Director's determination, either as to the refundability of a pro rata portion of dues or the calculation of the amount to be refunded, or both, then the member shall notify the Executive Director of the member's disagreement where indicated on the Dues Objection Form (by email or mail) within 30 calendar days of notice of the Executive Director's decision.

(c) If the member timely notifies the Executive Director that the member contests the Executive Director's resolution of the member's claim, under (b)(2) above, then the Executive Director shall, within 14 calendar days of receiving notice of the member's disagreement, notify the Oklahoma Attorney General, in writing, that an alternative resolution of the member's objection is required. The objecting member shall be copied on such notice. Upon receipt of such notice, the Attorney General shall appoint an attorney licensed in the State of Oklahoma, who is also a qualified mediator, as the arbitrator to decide the member's claim.

(d) If an arbitrator is appointed under (c) above, the OBA shall pay the arbitrator's reasonable arbitration fee.

4. Payment to Objecting Member Not an Admission. Any refund of a pro rata share of the member's dues shall be for the convenience of the OBA, and shall not be construed as an admission that the activity or action to which the member objected was or would not have been within the purposes or limitations of the Rules or Bylaws.

5. Duties of the OBA.

(a) Annual Budgeting Process.

(i) As part of the budgeting process conducted under the Rules and Bylaws for each fiscal year, the OBA Budget Committee shall review the budgeted items to identify expenditures that 1) are allocable to legislative advocacy activities and ii) might be non-chargeable under the Rules and Bylaws. If the Budget Committee identifies a proposed expenditure that it questions as non-chargeable, it shall recommend that the expenditure be removed from the budget. If the activity questioned by the committee as non-chargeable remains in the budget, a notice will be sent to members with the dues statement identifying the activity and including a copy of the *Keller* policy.

(ii) The budget shall then be submitted to the OBA's independent auditor, together with the foregoing items identified by the Budget Committee, who shall review the chargeable and non-chargeable items and provide the OBA Budget Committee a certification of i) chargeable and non-chargeable items, and ii) the reasonable calculation of member dues for the budget year allocable non-chargeable items (if any).

(iii) The OBA shall make available to a member, on reasonable notice, additional information on any items in the budget that are not confidential, prohibited by law or personally identifiable information attributable to employees or others without a release from the person with whom such information is associated. Any member request for additional budget information must be made to the Executive Director.

(iv) Additional procedures necessary to implement this Policy are attached as Appendix 1. The OBA shall, from time to time, amend these procedures, or adopt additional procedures, as necessary to implement this Policy.

(b) Audited Financial Statements. After the OBA Board of Governors has accepted the auditor's annual audit of its financial statement, the OBA shall post the audit report on the OBA website so that it is accessible to membership.

6. Notice of Policy and Objection Procedure. The following notice shall be published in conjunction with any publication or description of the OBA's budget, legislative program, performance measures, amicus briefs, and any other similar policy positions adopted by the OBA:

The purpose of the OBA is to engage in those activities enumerated in the Rules Creating and Controlling the Oklahoma Bar Association (the "Rules") and the OBA Bylaws (the "Bylaws"). The expenditure of funds by the OBA is limited both as set forth at the Rules and Bylaws and by *Keller v. State Bar of California*, 496 U.S. 1 (1990). The OBA has adopted a Notice and Objection Procedure to OBA Budgetary Expenditures (the "Policy"). Under the Policy, if any member has a reasonable belief that any actual or proposed OBA expenditure is not within such purposes of, or limitations on, the OBA, then such member may object thereto and seek a refund of a pro rata portion of his or her dues expended, plus interest, by filing a written objection with the Executive Director. The objection must be made in writing, on an official OBA Dues Objection Form, addressed to the Executive Director of the OBA, P. O. Box 53036, Oklahoma City, OK 73152, or by email to JohnW@okbar.org. The OBA Dues Objection Form may be obtained by written or in person request to the Executive Director or from the OBA website [here](#). For an objection to be timely, a member must submit the OBA Dues Objection Form in writing no later than 180 calendar days after the annual audit of the OBA is published on the OBA website.

Upon receipt of a member's written objection, the Executive Director shall within 21 calendar days review such objection together with the allocation of dues monies spent on the challenged activity

or action and, in consultation with the President, shall grant or deny the objection. If the objection is granted, then the Executive Director shall review OBA records to calculate a pro rata refund together with interest at the Oklahoma postjudgment rate for the budget year at issue, from the date the member's dues were paid. The objecting member shall have the option, within the time frames set out in the Policy, to seek a review of the Executive Director's decision by an independent arbitrator selected by the Oklahoma Attorney General. If a member elects such review under the time frames set out in the Policy, the OBA shall pay the arbitrator's reasonable fee. Refund of a pro rata share of the member's dues shall be for the convenience of the OBA, and shall not be construed as an admission that the challenged activity was or would not have been within the purposes of or limitations on the OBA.

To view the entire Policy, go to [\[website link\]](#), or contact the Executive Director at the address above. If there is any conflict between this notice and the Policy, the Policy shall control.

7. Dues Reasonably Determined Allocable to OBA Legislative Advocacy. At the time a member's annual OBA dues are paid, every member shall be provided a calculation reasonably determined by the OBA Budget Committee to equal each member's pro rata share of expenditures related to legislative advocacy related budgeted OBA activities for the corresponding dues year ("Calculation"). The basis for the Calculation shall be provided to members with the OBA Dues Statement. At the time a member's dues are paid, the member shall have the opportunity to subtract from his or her dues an amount equal to the Calculation.

Appendix 1

Procedures for Implementation

1. **Treatment of Member Dues If an Objection is Made.** During the review of a member objection, the entirety of the objecting member's dues will be set aside and segregated in a temporarily restricted fund for contingent liabilities during the period the objection is pending, under FASB. These funds will be segregated from operating funds until the objection is resolved. See OKLA. CONST. art. 10, § 23. If a refund attributable to an approved objection is made, it will be made with interest at the statutory rate payable on Oklahoma judgments (post judgment), in effect when the corresponding dues were paid under 12 OKLA. STAT. § 727.1(I), and interest will accrue from the date the objecting member paid his or her dues. For 2020 judgments, the post judgment interest rate is 6.75%.

2. **Review for legislative advocacy related activity and non-chargeable activity.** During the annual budget preparation process under the Rules Creating and Controlling the Oklahoma Bar Association ("Rules"), and OBA Bylaws, the Budget Committee will review all proposed budget expenditures in detail and cause to be separated any expenditures for activities considered directly related to legislative advocacy, pursuant to the *Keller* policy, while non-legislative advocacy related items will be assigned to general budget categories. Any item considered related to legislative advocacy will be examined to allocate expenditures reasonably attributable to the anticipated activity (including, for example, general overhead, printing, and website development). As to the legislative advocacy related activities identified, the Budget Committee shall then cause to be calculated a pro rata amount of the total sum allocable to such activities allocable to each member's dues payment (the "Calculation"). The Calculation will be based upon the dues paying membership categories of the OBA as of June 1 of the year in which the budget is being prepared, and will take into account distinct dues categories such as members who have been in practice for less than three years who pay one-half regular dues.

a. **Review for germaneness:** The Budget Committee will also review all proposed expenditures for germaneness, and any item with respect to which a question as to germaneness has been raised will be removed from the budget, or if the questioned activity remains in the budget, a notice will be sent to members with the dues statement identifying the activity and including a copy of the *Keller* policy.

After completing the foregoing calculations and review, the Budget Committee will submit the Calculation and the associated work papers to the independent auditor who audits the OBA's annual financial statements for certification that the items are properly categorized and that the calculations of the prorated amounts are correct.

After the auditor's review and certification of the identification of legislative advocacy related activity expenditures, the allocations and the pro rata determinations, the Budget Committee will finalize the budget and cause it to be published under the Rules, art. VII, § 1, together with a notice of the public hearing. Detailed information relating to the auditor's certification of expenditures and the pro rata calculation will be made available to OBA members by posting in the 'myokbar.org' area of the OBA website or by such other means as is necessary to ensure that OBA members have access to the information.

As set out in the Rules and Bylaws, any member may appear at the public hearing to protest any item included or excluded from the proposed budget, or the identification of legislative related activities expenditures, allocations and the pro rata determinations. Additionally, should a member question a budget category, the prior year's expenditures for that category, except for protected personal, privileged, or confidential information or information that is otherwise protected by law (for example but not by way of limitation, salaries, investigatory expenditures, and retirement

contributions), will be provided by the Executive Director, whether or not the member attended the hearing, together with an explanation of any additional amounts or activities in the questioned category that may be anticipated in the new budget. If information is withheld, it will be identified to the member by category.

If a member objection to the budget is made prior to its approval by the Oklahoma Supreme Court, the Budget Committee will advise the Oklahoma Supreme Court of the objection and will provide any additional information the Oklahoma Supreme Court may request.

The annual OBA Dues Statement will include any pro rata amounts separately attributable to legislative advocacy related activity, together with the Calculation, and make provision for members to deduct such pro rata sums from their bar dues. The Dues Statement will include a link to the OBA website to facilitate access to the detail included in the legislative related activities categories.

Additionally, the auditor's report on the OBA's financial statements for the preceding fiscal year will be posted on the OBA website after it has been accepted by the Board of Governors. During the 180 day objection period following such posting, the Executive Director will provide any requesting member detail regarding actual expenditures for any category, except for protected personal, privileged, or confidential information or information that is otherwise protected by law. If information is withheld, it will be identified to the member by category.

3. These procedures may be amended from time to time to implement the *Keller* Policy.