



State Bar Association
of North Dakota

NOTICE CONCERNING LICENSE FEES MEDIATION PROCESS LICENSE FEES YEAR 2024

I. **Overview**

In *Keller v. State Bar of California*, the United States Supreme Court held that a mandatory bar may not fund any activities with mandatory license fees unless those activities are germane under *Keller*. *Keller* also indicated that a mandatory bar could satisfy its constitutional obligation to ensure that such activities were funded with voluntary payments by adopting a procedure that allows dissenting members the opportunity to object, and further deduct a pro rata amount spent on those activities. The Court also indicated that a bar association could provide a mechanism to challenge the calculation of the deduction, similar to previous cases where mandatory union license fees were in dispute.

Activities not germane under *Keller v. State Bar of California* are considered to be “non-chargeable.” SBAND may use compulsory license fees of all members for all other activities, provided the activities are germane under *Keller*, and these activities are considered to be “chargeable.” The method used to calculate the amount of the license fees deduction is based on the method approved in *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986). In that case, the Court indicated that labor unions may use the year for which the most recent audit report is available as the base line period for determining chargeable and non-chargeable activities and calculating the cost of the non-chargeable activities.

To calculate this year’s license fees deduction, SBAND’s Executive Committee used this historical approach and reviewed activities for the fiscal year ending December 31, 2022 (FY22), the most recent fiscal year for which there is an audit report. A copy of the audit report can be found at:

https://www.sband.org/page/financial_audits

The Committee looked at SBAND’s activities during FY22 to identify chargeable and non-chargeable activities. For each activity found to be non-chargeable, SBAND calculated the cost of the activity, including all applicable overhead and administrative costs, and determined the amount of license fees expended on the activity. That process resulted in the determination that \$5,822 of license fees was expended on non-chargeable activities during FY22.

II. **License fees Deduction for FY24**

Each SBAND member’s FY24 pro rata portion of the license fees devoted to non-chargeable activities was calculated by a process that involved dividing the amount spent on non-chargeable activities by the estimated number of total license fee paying members for 2024 (3,050). In FY22 license fee income (excluding Discipline, Client Protection, and *Pro Hac* Fees) totaled \$677,250. License fee income comprises 64% of our total unrestricted revenue, and therefore the amount used to determine any non-chargeable amount is 64% of the expense, or the proportionate amount of license fees spent on non-chargeable activities.

There are three license fee levels. Members with five plus years of practice pay \$380, those with between one and five years pay \$350, and those with less than one year pay \$325. In making the calculation, we estimated the number of attorneys we anticipate will be in each level in FY24. We estimate 2,370 will pay \$380, 500 will pay \$350, and 180 will pay \$325. Under state law, \$75 of each license fee must be received by SBAND for operation of the lawyer discipline system. Eighty percent (80%) of the remaining amount of the annual license fee comes to SBAND for administering and operating the association, and 20% goes to the Board of Law Examiners. For a member paying the full license fee, which leaves SBAND with \$244. Further, \$16 of every license fee is dedicated to the Client Protection Fund.

For 2024, members paying \$380 may deduct \$1.23, members paying \$350 may deduct \$1.19, and members paying \$325 may deduct \$1.24.

Detailed Calculation of the License fees Deduction

2022 License Fee Income (excluding Discipline, <i>Pro Hac</i> Fees, and Client Protection Fund)	\$677,250
2022 Unrestricted Total Revenue	\$1,053,374
2022 Non-chargeable Expenses (2022 Audit)	
ABA Delegates	\$2,797
Staff Legislative / Lobbying Time and Expenses	\$2,581
Legislative Activity Expenses	\$ 76
TOTAL	\$5,454

2022 Overhead costs for non-chargeable expenses:

SBAND looked at its total budget to determine overhead costs (such as rent, utilities, copying charges, etc.) and calculated those to be \$99,407. Non-chargeable expenses total \$5,454 which is 0.37% of our overall FY22 expenses. To calculate overhead costs associated with non-chargeable activities, SBAND multiplied \$99,407 times 0.0037% for a total of \$368. That amount was added to \$5,454 for total non-chargeable expenses of \$5,822.

2022 % of Revenue from License Fees:

64% x \$5,822 equals **\$3,726** for FY22 and represents the amount of license fees used on non-chargeable activities in FY22 and the amount used in the FY24 Keller calculations.

I. Objections to SBAND’s Chargeability Determinations

The detailed calculation provided above in Section III is intended to be read in conjunction with the previous fiscal year’s audit report, which can be found here: https://www.sband.org/page/financial_audits

Any expenditure found in the audit report not listed in this section has been determined by SBAND to be chargeable. Should any member determine that any expenditure or category of expenditure in the audit report is non-chargeable but not included in Section III, that member shall submit a written objection to the Executive Director of the State Bar within 30 days of the receipt of the license fees statement. For details on the objection process, see SBAND’s Keller Policy located at https://www.sband.org/page/resource_links