AN EXECUTIVE SUMMARY OF KELLER AND RELATED CASE LAW

Several important court decisions have been issued since 1990, limiting the types of activities to which the State Bar of Arizona can be engaged. These cases, known as *Keller* and its progeny, address the appropriate use of mandatory bar dues for all State Bar activities and address appropriate procedures for addressing dissenting members' objections. This summary highlights the most important points that the courts have made in the development of the *Keller* doctrine.

I. *KELLER v STATE BAR OF CALIFORNIA*, 496 U.S. 1 (1990)

The *Keller* doctrine originated from a U.S. Supreme Court opinion issued in 1990, which stated that the compelled association within a unified bar is justified by the State's interest in the following areas: (1) regulating the legal profession, and (2) improving the quality of legal services.

Essentially, *Keller* held that "[t]he State Bar may therefore constitutionally fund activities germane to these goals out of mandatory fees of all members." Furthermore, the court added that the State Bar "may not, however, in such manner, fund activities of an ideological nature which fall outside of these areas of activity."

The *Keller* court also provided the following test in order to assist bar associations when determining permissible expenditures – "whether the challenged expenditures are necessarily or reasonably incurred for the purpose of regulating the legal profession or 'improving the quality of the legal service available to the people of the state.'"

II. *GIBSON v THE FLORIDA BAR*, 906 F.2d 624 (11th Cir. 1990)

Gibson was one of the first courts to accept the strategy that if a state bar decides to be "*Keller*-pure" and offer its members a constitutional procedure for objecting to expenditures of their mandatory dues, then the court need not concern itself of any specific activity engaged in by the bar. In *Gibson*, the 11th Circuit has stated that when considering the constitutionality of a bar associations' objection resolution procedure, rebate procedures will be acceptable in lieu of an advanced deduction procedure. It is also okay for a bar association to require a dissenting member to object to specific activities. Finally, the *Gibson* court determined that a three-member arbitration panel (as the procedure for handling an objecting member's dissent) is constitutionally acceptable.

III. *THE FLORIDA BAR RE FRANKEL*, 581 So.2d 1294 (Fla., 1991)

The Florida Supreme Court found that the following six areas were permissible areas for actions by the Florida Bar: (1) Questions re disciplining attorneys; (2) Matters re improvement of court functioning; (3) Increasing legal services to society; (4) Regulating Trust accounts; (5) Education, ethics and integrity of the legal profession; and (6) Issues of: (a) great public interest; (b) that lawyers are trained to evaluate; (c) where the subject matter effects the rights of those involved in the judicial system.

The Court also found the following three areas were not permissible areas for lobbying by the Florida Bar: Various children's rights; Welfare reform; and Benefits Legislation.

IV. *SCHNEIDER v COLEGIO*, 917 F.2d 620 (1st Cir. 1990), cert. den. 502 U.S. 1029 (1992)

In this case, the First Circuit held that it is not permissible for the Bar to take a position that rests upon partisan views rather than lawyerly concerns. Consequently, the Bar cannot use mandatory dues for lobbying on controversial bills to change the law in ways not directly linked to the legal profession or the judicial system.

Colegio also provides a list of acceptable activities that are chargeable even to dissenting members: (1) Lobbying regarding issues related to the core purpose of the Bar Association (budget appropriations for judges, increased salaries for government lawyers, positions against statutory limits on attorney advertising); (2) Attorney discipline; (3) Continuing Legal Education; (4) Admission of new attorneys; (5) Supervising law schools; (6) Increasing availability of legal services through Legal Aid; (7) Public education regarding legal services; and (8) Commentary on the function of the court system.

V. *LEHNERT v FERRIS FACULTY ASSOCIATION*, 500 U.S. at 519

In *Lehnert*, the U. S. Supreme Court addressed the question of what activities may be charged to dissenting members in a union, rather than a bar association. The *Lehnert* court concluded that chargeable activities must have three traits: (1) be germane to the core activity of the union; (2) be justified by the government's vital policy interest supported by mandatory membership in the union; and (3) not significantly add to the burdening of free speech that is inherent in the allowance of mandatory membership in the union. *Lehnert*, 500 U.S. at 519.

VI. *ROMERO v COLEGIO ABOGADOS PUERTO RICO*, 204 F.3d 291 (1st Cir. 2000)

This case reaffirms two principles: (1) a unified bar can give financial support to core related bar activities and (2) members cannot be compelled to contribute to "ideological activities not 'germane' to the purpose for which the compelled association is justified." This case also raises a third issue as to whether compelled bar association dues may be used to fund non-ideological and non-germane activities. The big issue presented was whether the Association of lawyers, the *Colegio*, could compel members to purchase group life insurance. The court felt the mandate violated the Keller doctrine but rather than declare the requirement to be unconstitutional, the Court remanded the issue back to the Puerto Rico Supreme Court to certify the following question: "Is the *Colegio [the association]* . . authorized to compel members to purchase life insurance coverage through the *Colegio* as a condition of membership in the Bar of Puerto Rico?"

The court also approved and reaffirmed the activity of charging members for social activities expenses because they are often diminimus, but also germane.