

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHWESTERN DIVISION**

ARNOLD FLECK,)	
)	
Plaintiff,)	
)	CIVIL RIGHTS COMPLAINT FOR
v.)	DECLARATORY AND
)	INJUNCTIVE RELIEF
JACK MCDONALD, President of the State)	
Bar Association of North Dakota;)	
AUBREY FIEBELKORN-ZUGER, Secretary)	
and Treasurer of the State Bar Association of)	Case No.
North Dakota; TONY WEILER, Executive)	
Director of the State Bar Association of North)	
Dakota; and PENNY MILLER,)	
Secretary-Treasurer of the State Board of)	
Law Examiners, in their official capacities,)	
)	
Defendants.)	

Plaintiff, Arnold Fleck, by and through his undersigned counsel, hereby files this
Complaint against Defendants and alleges as follows:

I. INTRODUCTION

1. This civil rights action seeks to vindicate Plaintiff’s rights to freedom of speech and association protected by the First and Fourteenth Amendments to the United States Constitution.

2. Those rights have been violated by Defendants’ enforcement of North Dakota statutes making membership in the State Bar Association of North Dakota (“SBAND”) a prerequisite to practicing law in the State and by Defendants’ imposition of mandatory dues as a condition of membership in SBAND.

3. North Dakota statutes give SBAND the privilege of receiving and spending mandatory member dues, but SBAND has disregarded its corresponding responsibility to provide its members with the minimum safeguards identified by the Supreme Court in Keller v. State Bar of California, 496 U.S. 1 (1990), and Chicago Teachers Union, Local No. 1 v. Hudson, 475 U.S. 292 (1986).

4. These minimum safeguards are necessary to ensure that mandatory member dues are only used for the narrow purpose of improving the quality of legal services through the regulation of attorneys. These safeguards allow members to protect their constitutional rights through adequate transparency and opportunity to object to improper expenditures. Defendants' procedures fall far below the minimum required. Defendants' failure to provide the minimum safeguards required violates Plaintiff's constitutional rights.

5. Furthermore, mandatory membership in SBAND is not necessary to improve the quality of legal services through the regulation of attorneys. This is demonstrated by the 18 states that do not have mandatory bars and regulate attorneys without the inherent infringement of First Amendment rights that comes with mandatory membership. See Knox v. Serv. Employees Int'l Union, Local 1000, 132 S. Ct. 2277, 2289 (2012). Because the State can ensure high quality legal services without mandating membership in SBAND, Defendants' enforcement of the membership requirement violates Plaintiff's constitutional rights.

6. Plaintiff has already felt the sting of Defendants' actions. Plaintiff strongly supported Measure 6, a child custody measure on the November 2014 North Dakota ballot. Committed to his support, he spent both time and money to advance the measure. Weeks before the election, through a third party, Plaintiff discovered his SBAND member dues were being used to work against his efforts. SBAND contributed \$50,000 to a Ballot Measure Committee

opposing Measure 6. Measure 6 ultimately failed at the polls and Plaintiff was provided with no recourse to challenge what he reasonably believes to be a misuse of his dues. Nor does he have any recourse going forward to prevent his dues from being used to support activities that he opposes.

II. JURISDICTION AND VENUE

7. This case is brought pursuant to 42 U.S.C. §§ 1983 and 1988, and 28 U.S.C. §§ 2201 and 2202.

8. Subject matter jurisdiction is based on 28 U.S.C. §§ 1331 and 1343(a) (3) and (4).

9. Venue is appropriate pursuant to 28 U.S.C § 1391(b) and D.N.D. Civ. L. R. 3.1.

III. PARTIES

10. Plaintiff Arnold Fleck is a citizen of the United States and resides in Burleigh County, North Dakota. Plaintiff is a duly licensed attorney under the laws of North Dakota and is a member of SBAND because membership is a mandatory prerequisite to practice law in the State of North Dakota pursuant to N.D.C.C. §§ 27-11-22 and 27-12-02.

11. Defendant Jack McDonald is a resident of Burleigh County, North Dakota, and President of SBAND. As President of SBAND, Defendant McDonald is responsible for creating and implementing procedural safeguards required to ensure member dues are used only for “chargeable” activities—meaning only those germane to improving the quality of legal services through the regulation of attorneys. Defendant McDonald also participates in determining positions on legislation and ballot measures both as a member of the Board of Governors and the Legislative Committee. Defendant McDonald is responsible for enforcing the laws requiring

membership and funding of SBAND as a prerequisite to practicing law in the State of North Dakota. Defendant McDonald is currently implementing and enforcing the unconstitutional practices and polices complained of in this action. Defendant McDonald is sued in his official capacity.

12. Defendant Aubrey Fiebelkorn-Zuger is a resident of Cass County, North Dakota, and Secretary and Treasurer of SBAND. In that capacity, Defendant Fiebelkorn-Zuger is responsible for creating and implementing procedural safeguards required to ensure member dues are used only for chargeable activities. Defendant Fiebelkorn-Zuger also participates in determining SBAND's positions on legislation and ballot measures as a member of the Board of Governors. Defendant Fiebelkorn-Zuger is responsible for enforcing the laws requiring membership and funding of SBAND as a prerequisite to practicing law in the State of North Dakota. Defendant Fiebelkorn-Zuger is currently implementing and enforcing the unconstitutional practices and polices complained of in this action. Defendant Fiebelkorn-Zuger is sued in her official capacity.

13. Defendant Tony Weiler is a resident of Burleigh County, North Dakota, and Executive Director of SBAND. In that capacity, Defendant Weiler is responsible for creating and implementing procedural safeguards required to ensure member dues are used only for chargeable activities. As Executive Director, Defendant Weiler also serves as the chief lobbyist of SBAND and works with the Legislative Committee to develop and implement SBAND's legislative priorities. Defendant Weiler is responsible for enforcing the laws requiring membership and funding of SBAND as a prerequisite to practicing law in the State of North Dakota. Defendant Weiler is currently implementing and enforcing the unconstitutional

practices and polices complained of in this action. Defendant Weiler is sued in his official capacity.

14. Defendant Penny Miller is a resident of Burleigh County, North Dakota, and Secretary-Treasurer of the State Board of Law Examiners. In that capacity, Defendant Miller is charged with collecting mandatory dues from SBAND members and disbursing those dues to SBAND as proscribed by statute. Defendant Miller is sued in her official capacity.

IV. FACTS

15. Every attorney licensed in North Dakota is compelled by North Dakota law to join SBAND and subsidize its speech in order to earn a living practicing law in the State. N.D.C.C. §§ 27-11-22, 27-12-02.

16. SBAND was created by an Act of the North Dakota Legislative Assembly. It was the first integrated bar in the entire United States. N.D.C.C. § 27-12-01.

17. Defendants enforce laws requiring membership in and funding of SBAND as a prerequisite to practicing law in the State of North Dakota. N.D.C.C. §§ 27-11-24, 27-12-02, 27-12-04.

18. Mandatory dues are collected by the State Board of Law Examiners and disbursed to SBAND. N.D.C.C §§ 27-11-22, 27-11-24, 27-12-04.

19. The State Board of Law Examiners collects mandatory dues amounts ranging from \$325 to \$380 from each attorney licensed in North Dakota due in December of every year.

20. The State Board of Law Examiners disburses \$75 out of each attorney's mandatory dues to SBAND for the operation of the lawyer discipline system. N.D.C.C. § 27-12-04.

21. The State Board of Law Examiners disburses 80 percent of the remaining amount of the mandatory dues to SBAND for the purpose of administering and operating the bar association. Id.

22. Defendants thus act under color of state law when collecting and spending mandatory dues.

23. SBAND has approximately 2,700 members.

24. Defendants are responsible for the content of the annual dues notice.

25. A true and accurate copy of the annual dues notice is attached hereto as Exhibit 1.

26. Plaintiff remitted his 2015 mandatory dues on December 26, 2014.

27. SBAND's receipt and use of mandatory dues implicates its members' rights of free speech and free association, protected by the First and Fourteenth Amendments.

28. To limit the inherent impingement of members' First Amendment rights caused by compelled speech and association, Keller v. State Bar of California only allows SBAND to use mandatory member dues for activities germane to improving the quality of legal services through the regulation of attorneys. 496 U.S. at 14.

29. Except for those expenditures germane to improving the quality of legal services through the regulation of attorneys, all other expenditures made by SBAND are non-germane to its purpose and non-chargeable to its membership.

30. To protect the rights of its members and ensure mandatory member dues are used only for chargeable expenditures, Defendants are required to institute safeguards that provide, at a minimum: (a) notice to members, including an adequate explanation of the basis for the dues and calculations of all non-chargeable activities, verified by an independent auditor; (b) a reasonably prompt decision by an impartial decision maker if a member objects to the way his or

her mandatory dues are being spent; and (c) an escrow for the amounts reasonably in dispute while such objections are pending. Keller, 496 U.S. at 14.

31. Refunding mandatory dues after an objection is resolved is insufficient. A remedy that merely offers dissenters the possibility of a refund does not avoid the risk that dissenters' funds may be used temporarily for an improper purpose.

32. SBAND must also provide its members with the opportunity to affirmatively consent to the use of their dues for non-chargeable activities.

33. SBAND affords Plaintiff no constitutionally adequate procedure to dispute the way his mandatory dues are being spent. In correspondence with Plaintiff (a true and accurate copy is attached as Exhibit 2), Defendant Weiler identified the following language from SBAND's Legislative Policy as SBAND's "Keller refund notice":

Any member of the Association who dissents from a position on any legislative or ballot measure matter and records that opposition in writing to the Executive Director may receive a refund of that portion of his or her dues which would otherwise have been used in the Association legislative or ballot measure activity complained of.

34. A true and accurate copy of the Legislative Policy is attached hereto as Exhibit 3.

35. SBAND's Legislative Policy was adopted in the 1980s, and most recently readopted on July 30, 2014.

36. The Legislative Policy does not distinguish between chargeable and non-chargeable activities.

37. SBAND's procedures fail to provide notice to members that includes an adequate explanation for the basis for dues.

38. SBAND's procedures fail to provide notice to members that includes calculations of all non-chargeable activities.

39. SBAND's procedures fail to provide notice to members that is verified by an independent auditor.

40. SBAND's procedures fail to provide a reasonably prompt decision by an impartial decision maker if a member objects to the way his or her mandatory dues are being spent.

41. SBAND's procedures fail to provide an escrow for the amounts reasonably in dispute while member objections are pending.

42. SBAND's procedures fail to seek the affirmative consent of association members to use compulsory dues for non-chargeable activities.

43. Plaintiff will challenge SBAND's allocation of mandatory member dues when Keller procedures are put in place.

44. SBAND spends mandatory member dues on activities that Plaintiff reasonably believes are non-chargeable.

45. For example, SBAND used mandatory member dues during the November 2014 election to oppose North Dakota Initiated Statutory Measure No. 6 ("Measure 6").

46. Measure 6 proposed to "amend section 14-09-06.2 of the North Dakota Century Code to create a presumption that each parent is a fit parent and entitled to be awarded equal parental rights and responsibilities by a court unless there is clear and convincing evidence to the contrary." Official Ballot Language for Measures Appearing on the Election Ballot, North Dakota Secretary of State (available at https://vip.sos.nd.gov/pdfs/measures%20Info/2014%20General/Official_Ballot_Language_2014_General.pdf) (last accessed on Jan. 28, 2015).

47. Plaintiff strongly supported Measure 6.

48. Plaintiff contributed \$1,000 to “ND Shared Parenting Initiative,” a Ballot Measure Committee which supported Measure 6.

49. Plaintiff also advocated on behalf of Measure 6. His advocacy included participation in debates for television and radio as well as expressing his support of Measure in interviews with television and newspaper reporters.

50. SBAND was the single largest contributor to the Measure 6 opposition.

51. SBAND contributed \$50,000 to “Keeping Kids First,” a Ballot Measure Committee that opposed Measure 6.

52. SBAND aided Keeping Kids First through Defendant Weiler’s participation as a member of Keeping Kids First’s committee.

53. SBAND provided logistical aid to Keeping Kids First, allowing Keeping Kids First to utilize SBAND’s email system and establish an email address:

keepingkidsfirst@sband.org.

54. Plaintiff reasonably believes Measure 6 was not germane to SBAND’s purpose of improving the quality of legal services through the regulation of attorneys.

55. Plaintiff reasonably believes SBAND’s activities in opposition to Measure 6 were non-chargeable.

56. Plaintiff did not want SBAND to use his mandatory dues to oppose Measure 6.

57. Plaintiff received no notice from SBAND regarding its opposition to Measure 6 and its contributions to Keeping Kids First.

58. Plaintiff learned of SBAND’s activities regarding Measure 6 through a third party on September 22, 2014.

59. On October 15, 2014, Plaintiff found SBAND's contributions to Keeping Kids First on a campaign disclosure report on the North Dakota Secretary of State's campaign finance website.

60. The 2014 North Dakota election in which Measure 6 appeared on the ballot was held on November 4, 2014.

61. On October 15, 2014, Plaintiff contacted Defendant Weiler to confirm SBAND was funding Keeping Kids First and to inquire what procedures SBAND afforded Plaintiff to remedy what he reasonably believed to be a violation of his constitutional rights caused by SBAND's activities opposing Measure 6.

62. On October 15, 2014, after SBAND had already spent mandatory member dues to oppose Measure 6, Defendant Weiler told Plaintiff he may be able to receive a refund of "around \$6 and change."

63. Defendant Weiler gave Plaintiff no adequate explanation for the basis of this proposed refund.

64. Plaintiff was unable to determine if the \$6 refund accurately reflected the amount of his mandatory dues used for SBAND's Measure 6 opposition.

65. Defendant Weiler, as a committee member for Keeping Kids First, is not an impartial decision maker.

66. If Plaintiff were to receive an adequate refund through SBAND's procedures, he would only receive a refund after his mandatory dues were already expended to advance SBAND's Measure 6 opposition.

67. Had Plaintiff been provided with constitutionally adequate procedures to dispute SBAND's activities as non-chargeable and prevent his dues money from being expended, he would have done so.

68. SBAND's opposition to Measure 6 illustrates the necessity of the minimally required procedures set forth in ¶ 30.

69. SBAND also engages in non-chargeable lobbying activities at the North Dakota Legislature.

FIRST CLAIM FOR RELIEF
(Compelled Speech and Association)
(First and Fourteenth Amendments)

70. The allegations contained in the preceding paragraphs are incorporated by reference as if fully set forth here.

71. The First and Fourteenth Amendments protect the right of an objecting bar association member to decline to subsidize activities that are not germane to a mandatory bar's purpose of improving the quality of legal services through the regulation of attorneys.

72. The First and Fourteenth Amendments require that procedures for the collection and expenditure of mandatory member dues be narrowly tailored to allow members to object to non-chargeable expenditures in order to protect their fundamental rights to freedom of speech and association.

73. Under color of state law, Defendants have received and continue to receive mandatory member dues without providing the minimum safeguards required by the First and Fourteenth Amendments.

74. At a minimum, these safeguards must provide: (a) notice to members, including an adequate explanation of the basis for the dues and calculations of all non-chargeable

activities, verified by an independent auditor; (b) a reasonably prompt decision by an impartial decision maker if a member objects to the way his or her mandatory dues are being spent; and (c) an escrow for the amounts reasonably in dispute while such objections are pending.

75. By failing to provide the minimum safeguards required by the First and Fourteenth Amendments before collecting and expending mandatory member dues, Defendants currently maintain and actively enforce a set of laws, practices, and policies that deprive Plaintiff of his First and Fourteenth Amendment rights.

76. Plaintiff is therefore entitled to declaratory and permanent injunctive relief against continued enforcement and maintenance of Defendants' unconstitutional laws, practices, and policies. See 28 U.S.C. §§ 2201, 2202.

SECOND CLAIM FOR RELIEF
(Right to Affirmatively Consent)
(First and Fourteenth Amendments)

77. The allegations contained in the preceding paragraphs are incorporated by reference as if fully set forth here.

78. The First and Fourteenth Amendments protect the right of an objecting bar association member to affirmatively consent to subsidize activities that are not germane to a mandatory bar's purpose of improving the quality of legal services through the regulation of attorneys.

79. By failing to provide members of the State Bar Association of North Dakota, including Plaintiff, the opportunity to affirmatively consent to the use of their dues for non-chargeable activities, Defendants currently maintain and actively enforce a set of laws, practices,

and policies that deprive Plaintiff of his rights of free speech and free association, in violation of the First and Fourteenth Amendments.

80. Plaintiff is therefore entitled to declaratory and permanent injunctive relief against continued enforcement and maintenance of Defendants' unconstitutional laws, practices, and policies. See 28 U.S.C. §§ 2201, 2202.

THIRD CLAIM FOR RELIEF
(Compelled Membership)
(First and Fourteenth Amendments)

81. The allegations contained in the preceding paragraphs are incorporated by reference as if fully set forth here.

82. The First and Fourteenth Amendments protect not only the freedom to associate, but the freedom not to associate.

83. The First and Fourteenth Amendments protect the freedom to avoid subsidizing group speech with which an individual disagrees.

84. By its very nature, the State Bar Association of North Dakota, as a mandatory bar association, violates these rights.

85. Mandatory associations are permissible only when they serve a compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms.

86. The only state interest for instituting a mandatory bar association is improving the quality of legal services through the regulation of attorneys.

87. Improving the quality of legal services through the regulation of attorneys can readily be achieved through means significantly less restrictive of associational freedoms.

88. By failing to utilize means significantly less restrictive of associational freedoms than a mandatory association to improve the quality of legal services through the regulation of attorneys, Defendants currently maintain and actively enforce a set of laws, practices, and policies that deprive Plaintiff of his rights of free speech and free association, in violation of the First and Fourteenth Amendments

89. Plaintiff is therefore entitled to declaratory and permanent injunctive relief against continued enforcement and maintenance of Defendants' unconstitutional laws, practices, and policies. See 28 U.S.C. §§ 2201, 2202.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests that this Court enter judgment in his favor as follows:

A. Declare that Plaintiff's rights to freedom of speech and association under the First and Fourteenth Amendments are violated by Defendants' failure to implement the minimum safeguards set out in ¶ 30 as required by Keller v. State Bar of California;

B. Declare that Defendants must allow members of the State Bar Association of North Dakota, including Plaintiff, the opportunity to affirmatively consent to the use of their dues for non-chargeable activities in order to adequately safeguard their First and Fourteenth Amendment rights; and

C. Preliminarily and permanently enjoin Defendants, their officers, agents, servants, employees, and all persons in active concert or participation with them from the collection and expenditure of mandatory dues unless or until Defendants adopt procedures that adequately safeguard Plaintiff's First and Fourteenth Amendment rights.

D. In the alternative, declare that Plaintiff's rights to freedom of speech and association under the First and Fourteenth Amendments are violated by Defendants' enforcement of North Dakota statutes making membership in the State Bar Association of North Dakota a prerequisite to practicing law in the State and by Defendants' imposition of mandatory dues as a condition of membership; and

E. Preliminarily and permanently enjoin Defendants, their officers, agents, servants, employees, and all persons in active concert or participation with them from enforcing N.D.C.C. § 27-12-02, which institutes mandatory membership in the State Bar Association of North Dakota; and N.D.C.C §§ 27-11-24 (1), (4), and 27-12-04, which require the payment and disbursement of mandatory dues to the State Bar Association.

F. Award Plaintiff his costs, attorneys' fees, and other expenses in accordance with law, including 42 U.S.C. § 1988; and

G. Order such additional relief as may be just and proper.

Dated this 3rd day of February, 2015

Respectfully submitted,

/s/ Jared Blanchard

Jared Blanchard (031198)

James Manley (031820)

**Scharf-Norton Center for Constitutional
Litigation at the**

GOLDWATER INSTITUTE

500 E. Coronado Road

Phoenix, AZ 85004

Ph: 602-462-5000

Fax: 602-256-7045

litigation@goldwaterinstitute.org

Attorneys for Plaintiff

EXHIBIT 1 TO COMPLAINT

NORTH DAKOTA STATE BOARD OF LAW EXAMINERS

JUDICIAL WING 1ST FL
600 E. BOULEVARD AVE
BISMARCK, ND 58505-0530

STATEMENT OF LICENSE FEES DUE

(Return complete statement with check. No credit cards accepted.)

Section 27-11-22, NDCC, provides every person engaged in the practice of law or who serves as a judge of a court of record shall secure an annual license **ON OR BEFORE JANUARY 1 OF EACH CALENDAR YEAR.**

MR ARNOLD V FLECK
ATTORNEY AT LAW
FLECK LAW OFFICE
314 E. THAYER AVE., STE. 220
P.O. BOX 6178
BISMARCK ND 58506-6178

ADMITTED: 09/29/1983
PHONE NO.: 701-258-5256
FAX NO.: 701-258-5626

EMAIL: arnfleck@usa.net
E-SERVICE EMAIL:

ANNUAL LICENSE FEE FOR 2015 \$380.00 - five or more years from the date of admission.

PLEASE NOTIFY THIS OFFICE OF ANY CHANGES IN THE ABOVE INFORMATION

REQUIRED ANNUAL CERTIFICATE OF COMPLIANCE TO CLERK OF THE SUPREME COURT

I certify that I have read rule 1.15, N.D. Rules of Professional Conduct and that...

A. TRUST ACCOUNT

I am in compliance with Rule 1.15. My trust account is:

Account Number: _____
Financial Institution: _____

OR

I am exempt from Rule 1.15 because:

- I do not actively practice law.
- I do not maintain an office in North Dakota.
- I do not handle client funds because:
 - I am a full-time judge, corporate counsel, or government attorney.
 - I **never** hold property of clients or third persons.
 - Other: Please explain _____

B. MALPRACTICE INSURANCE

I represent private clients.

- I am currently covered by professional liability insurance and intend to maintain such insurance during the next 12 months.
- I am **NOT** covered by professional liability insurance.
- Other: Please explain _____

I do not represent private clients.

SIGNATURE: _____

LAW FIRM: _____

STATE BAR ASSOCIATION OF NORTH DAKOTA ANNUAL SBAND SECTION ENROLLMENT FORM

- Administrative & Government Lawyers - \$10
- Business & Corporations - \$10
- Criminal Defense - \$10
- Family Law - \$25
- Legal Economics - \$10
- Elder Law - \$10
- Real Property, Probate & Trust Law - \$25
- Taxation - \$10
- Women Lawyers - \$10

Subtotal \$ _____

ND BAR FOUNDATION

- Sustaining Member (Annual) \$ 25.00
- Donor (\$500 total or \$50 Annual) \$ 50.00
- Patron (\$1,000 total or \$100 Annual) \$ 100.00
- Silver Patron (\$2,500 total or \$250 Annual) \$ 250.00
- Gold Patron (\$5,000 total or \$500 Annual) \$ 500.00
- Platinum Patron (\$10,000 total or \$1,000 Annual) \$1,000.00

Pro Bono Fund

_____ Hours (\$85/hour) \$ _____

Subtotal \$ _____

TOTAL SECTION AND FOUNDATION FEES REMITTED

TOTAL \$ _____

MAKE ALL CHECKS PAYABLE TO: STATE BOARD OF LAW EXAMINERS

600 E. BOULEVARD AVE, BISMARCK, ND 58505-0530

INSTRUCTIONS FOR COMPLETING LICENSE RENEWAL FORM

The following information **MUST BE COMPLETED** on the Statement of License Fees/Certificate of Compliance.

1. **Verify your address, phone, fax, and e-mail information is correct.** Changes can be handwritten directly on the statement.
2. **Lower left portion of the statement - Mandatory:**
 - Answer section A regarding Trust Account information
 - Answer section B regarding Malpractice Insurance
 - Sign the certificate and identify your law firm name, if applicable.
3. **Lower right portion of the statement - Optional:**
 - If you choose to enroll in any section of the State Bar Association, please send one check or money order which includes your license fee and the additional section fees.
4. Return the **complete** Statement (not just the top half) with your check or money order. The statement must accompany your check.

No credit card payments are accepted.

Please note: Licenses expire on December 31. You will not be licensed for the following calendar year without the completed license statement and fees on file in the Board office on December 31.

Failure to properly complete and return the license statement and provide the appropriate fees will result in a delay of your licensure.

Thank you.

EXHIBIT 2 TO COMPLAINT

From: [Tony Weiler](#)
To: [Arnold Fleck](#)
Subject: RE: SBAND's Legislative Policy
Date: Friday, October 17, 2014 9:10:04 AM

Arnie, this policy is "readopted" every year, and was in place in the period you mention in question. The date reflects the recent readoption by the Board.

-----Original Message-----

From: Arnold Fleck [<mailto:arnfleck@usa.net>]
Sent: Thursday, October 16, 2014 2:09 PM
To: Tony Weiler
Subject: RE: SBAND's Legislative Policy

Tony:

Thanks for the quick response. However, the Legislative Policy you attached to your email was approved by the Associations' Board on July 30, 2014, which raises questions as to what was the Association's policy/procedure relating to its collection and refunding/rebating of mandatory member dues from January 1, 2011, to July 30, 2014. If there was any other policy or procedure that was approved by the Board and in effect from January 1, 2011, to July 30, 2014, please provide me with each such policy/procedure and the dates each was in effect during that time. If there was no policy or procedures in effect during that time, please confirm that point with me.

I look forward to receiving your answer to this question and the information regarding the action taken by SBAND on legislative bills and initiated measures since January 1, 2011, that I requested in my email to you of yesterday.

Thanks Again!

Arnold V. Fleck
FLECK LAW OFFICE
314 E. Thayer Ave. Suite 220
P.O. Box 6178
Bismarck, ND 58506-6178
Telephone: (701) 258-5256
Fax: (701) 258-5626

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----- Original Message -----

Received: Thu, 16 Oct 2014 11:31:40 AM CDT
From: Tony Weiler <tony@sband.org>
To: Arnold Fleck <arnfleck@usa.net>
Subject: RE: SBAND's Funding of Opposition to Measure 6

> Arnie, I am attaching our Legislative Policy. In the last paragraph,
> you
will notice language that we consider our "Keller" refund notice. If you have any other questions, please let me know.
>

> I will work on the other questions you posed, but again, it will take
> some
time. Thanks.

>
> Tony

>
> Tony J. Weiler
> Executive Director
> State Bar Association of North Dakota
> 1661 Capitol Way, LL104
> Bismarck, ND 58501

>
> (701) 255-1404 (o)
> (701) 220-5846 (c)

>
>

> -----Original Message-----

> From: Arnold Fleck [<mailto:arnfleck@usa.net>]
> Sent: Wednesday, October 15, 2014 3:04 PM
> To: Tony Weiler
> Subject: SBAND's Funding of Opposition to Measure 6

>
> Tony:

>
> In our earlier telephone conversation of today on the topic of SBAND's
funding of the opposition to Measure 6 you indicated the only remedy I have to SBAND's taking a position against
Measure 6, a measure I support, and providing
> \$50,000 of SBAND's funds to the Keeping Kids First group, an
> organization
that is actively opposing passage of the Measure, is for me to request a refund of that part of my dues that the
Association used for that purpose.

>
> Before I decide how to proceed to what I perceive is a violation of my
Constitutional rights, I request that you provide me with the following
> information:

>
> 1. A list of all the legislative bills for which SBAND has lobbied on
> in
the last two legislative sessions or since January 1, 2011;

>
> 2. A list of all the initiated measures on which SBAND has taken a
> position
for or against and for each such measure, if applicable, an accounting of the amount of funds expended by the
Association to in anyway further that position; and

>
> 3. A current copy of SBAND's procedures relating to its collection
> and
refunding/rebating of mandatory member dues, including but not limited to any provisions that allow members to
opt-out of paying for non-regulatory activities and/or that set out the procedure that a member must follow to file a
grievance against the Association when the Association spends mandatory member dues on non-regulatory
activities and/or seek the refund/rebate to which you stated members are entitled to when the Association spends
mandatory member dues on non-regulatory activities.

>
> Since the procedures relating to SBAND's collection and
> refunding/rebating
of mandatory member dues are apparently already in existence, please mail them to me within the next week, and, if
the other two lists that I have requested are not as readily available, please send them to me as soon as you or your

staff are able to generate that information.

>

> If you will not be sending me any of this information, please inform

> me of

the reason or reasons you have for not doing so. Otherwise, I look forward to receiving the above requested information in the near future.

>

> Arnold V. Fleck

> FLECK LAW OFFICE

> 314 E. Thayer Ave. Suite 220

> P.O. Box 6178

> Bismarck, ND 58506-6178

> Telephone: (701) 258-5256

> Fax: (701) 258-5626

>

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> Electronic

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>

>

>

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> -----

> Attachment: Legislative Policy [BOG Approved 07-30-2014].pdf

> MIME Type: application/pdf

> -----

EXHIBIT 3 TO COMPLAINT



STATE BAR ASSOCIATION OF NORTH DAKOTA LEGISLATIVE POLICY

The stated objectives of the State Bar Association of North Dakota include promotion of the administration of justice and upholding the honor of the profession. In order to effectively accomplish these goals it is often necessary to deal in the legislative arena and with initiated and referred measures.

As an integrated bar, the State Bar Association of North Dakota endeavors to speak for the Association as a whole, while fully recognizing that it is a practical impossibility to gain unanimity of opinion on almost any issue. The most controversial issues are almost always the most divisive and they are also invariably the ones that the Association is asked to comment on. While it is gratifying to note that the Association's judgment is welcomed and sought after in many of these difficult issues, this policy is intended to set parameters for Association legislative activities and make the work of the Legislative Committee and the professional staff manageable.

Since the Association's role in legislative proposals and initiated and referred measures properly should vary depending upon the nature of the proposal under consideration, this policy delineates categories and parameters for Association action. While recognizing that clear categorical lines are difficult, the Association should generally posture itself as follows:

1. Generally the expertise of the Association's committees, sections and members is respected and welcomed. This is especially true with the myriad of bills and measures dealing with the complex laws affecting commerce, such as the Uniform Commercial Code, trade regulation and business organization laws, laws relating to estates and trusts; laws relating to family law; or those particularly affecting the practice of law, such as regulation of attorneys, budget appropriation for the judiciary and legal aid, proposed changes in litigation procedures, regulation of attorney's client trust accounts or law school and bar admission standards.

Legislators and legislative committees often seek out the views of knowledgeable representatives of the Association in these areas and pay close attention to their recommendations. Within that framework the Association does have a significant impact on legislation and will maintain an aggressive policy of supporting, opposing and proposing legislation in this area.

2. When it comes to broader issues of social policy the Association's role and influence is necessarily different. These are issues that generally have strong political overtones. In these areas the Association may be viewed more as a special interest group than as a body of experts. The Association will take great pains to recognize this important distinction, and will generally avoid taking positions on issues of this nature.

3. A third category of proposals are those which may be termed "technical" issues. These are bills and measures affecting specific areas of the law in which various sections or committees have a particular interest and expertise. The key consideration as to these matters is for the Association not to act as a "lobbyist" in the popular sense of the word, but rather to offer its expertise and informed

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judgment. Representatives of the Association may be invited to impartially explain the probable legal consequences of the proposed bill or measures.

It is further the policy of the Association that decision-making on important issues be broad based, and that the views of individual members be taken into account. The Legislative Committee should endeavor throughout the interim to identify the major issues to come before the next legislative session and invite discussion of these matters by the General Assembly. This discussion may come in the form of committee or special reports or other programs, and after ample notice to the full membership and the opportunity for full discussion a vote will be taken as to the position of the membership on these issues.

The Legislative Committee and the Board of Governors are empowered to consider any and all legislation that is considered by interim committees or is introduced during a legislative session and may seek the introduction of legislation the Association favors. The Association ought not however, become actively involved in every issue that remotely may affect lawyers and it must be especially circumspect regarding measures that are likely to be regarded by the legislature as having significant political importance—those on which other pressure groups are expected to have strong views. It is necessarily a balancing process in which clear guidelines are hard to articulate. In deciding to press a point of view the Association shall consider (1) how and to what degree the matter really affects the vital concerns of lawyers (2) whether the Association, in any contact with the legislature, is likely to be regarded as merely an interest group or as a more impartial (and, therefore, more credible) expert and (3) what the likelihood is that the Association's efforts will be successful.

Any member of the Association who dissents from a position on any legislative or ballot measure matter and records that opposition in writing to the Executive Director may receive a refund of that portion of his or her dues which would otherwise have been used in the Association legislative or ballot measure activity complained of.