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To: Julie Rich
Date: 10/30/2017 1:28 PM
Subject: Information for the Court's consideration
Attachments: Where Your Dues Go Chart - FY18 Budget.pdf; Follow-up information.docx

Julie: During the hearing this morning, the Court had several questions about various issues that, due to the limited time available, were not fully addressed. We are providing the attached bullet points to try to address those issues and, hopefully, assist the Court in clarifying any lingering questions. If there are any additional questions or clarifications, we would be happy to provide any information that would be helpful to the Court. Please do not hesitate to contact any of us.

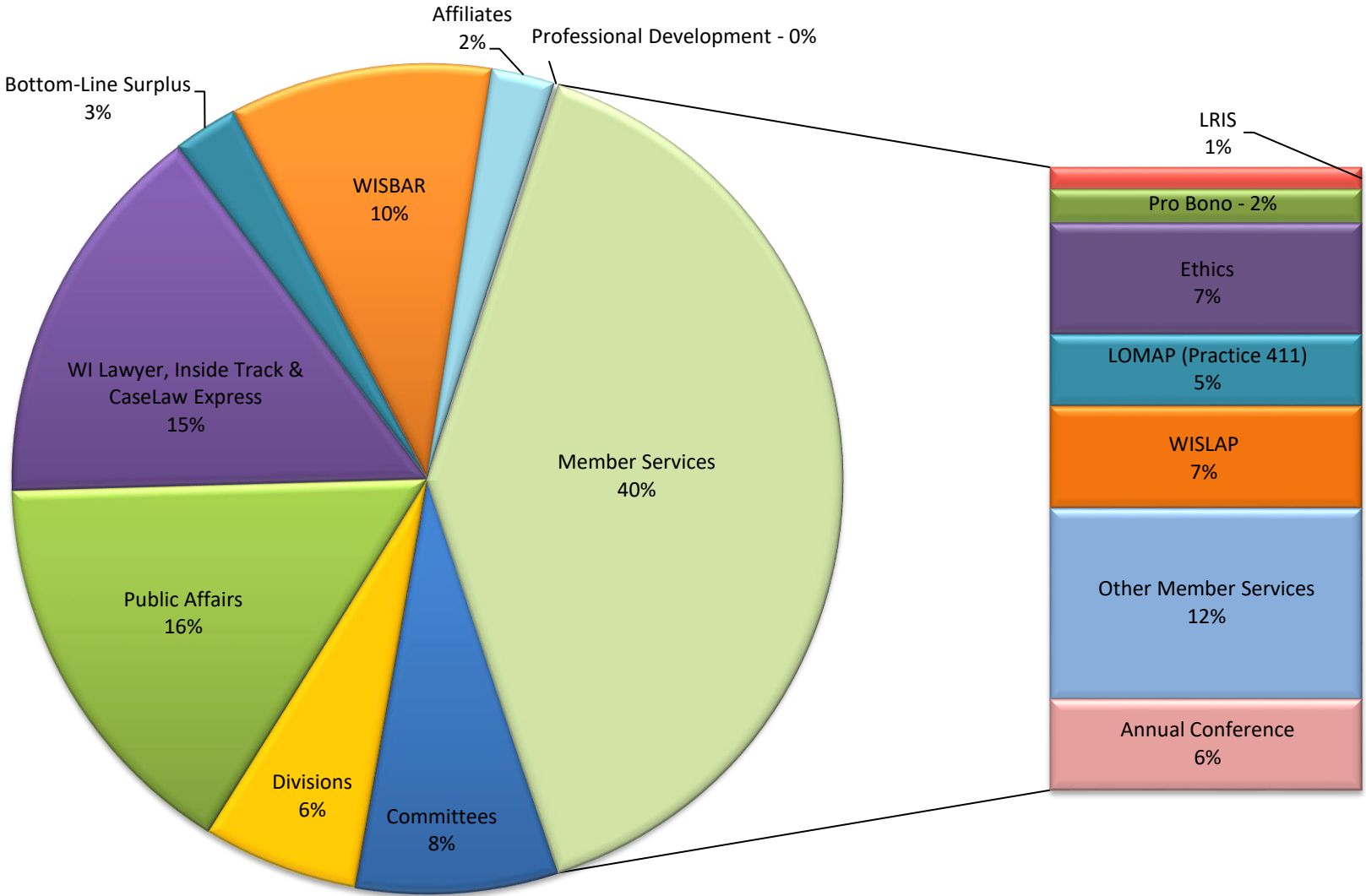
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State Bar of Wisconsin Fiscal 2018 Budgeted Programs and Services Your Dues Support



Please note the cost of each area includes an allocation for a fair share of governance and administrative costs.

1. Transparency questions – what does the Bar do and how does it spend its money
 - a. The Bar’s budgets are readily available online
<http://www.wisbar.org/formembers/groups/leadership/BoardOfGovernors/Pages/FileCabinet.aspx?CurrentPath=BOG+Meeting+Materials%2f2016-2017+BOG+Meeting+Materials%2f&download=2589e395-7937-452f-a23d-2f1c36a1faf5> at p. 45
<http://www.wisbar.org/newspublications/wisconsinlawyer/pages/article.aspx?volume=86&issue=2&articleid=10621>
 - b. All Bar members are given notice of the Executive Committee meeting at which the Keller dues reduction is determined and are welcomed to attend (some have)
<http://www.wisbar.org/newspublications/insidetrack/pages/article.aspx?volume=9&issue=14&articleid=25734>
 - c. The annual dues statement provides detailed activities of the Bar
<http://www.wisbar.org/aboutus/membership/documents/faq%20dues%20insert-2018.pdf>;
<http://www.wisbar.org/newspublications/insidetrack/pages/article.aspx?volume=9&issue=9&articleid=25583>;
 - d. <http://www.wisbar.org/newspublications/insidetrack/pages/article.aspx?volume=4&issue=9&articleid=8025>
 - e. All Board of Governors and Executive Committee agendas and minutes are available online <http://www.wisbar.org/formembers/groups/leadership/Pages/Leadership.aspx>
2. Is the Bar a private or governmental agency?
 - a. It depends on the context in which the question is asked. For 1ST/11th Amendment purposes, the Bar is a governmental agency (*Thiel*); for other purposes, it depends on the definition used (e.g. in the late 80s there was a question about the Bar’s ability to obtain reduced postal rates – depended on the definition in the postal regulations)
 - b. Bottom line, however, is that it doesn’t matter. The State Bar was created by and is ultimately governed by this Court and it is an arm of this Court
3. US Supreme Court cases (*Harris, Friedrichs, Janus*)
 - a. In *Harris*, the Court was careful to say that *Keller* was well within the analysis in that case (*see* final section of the majority decision)
 - b. In *Friedrichs* and *Janus* briefing, consistent discussion about how the Bar is different and that changing/overruling *Abood* should not impact that analysis
4. Free riders
 - a. There is a free rider issue here: All members of the Bar have a duty to provide support for activities intended to improve the quality of legal services. Mandatory dues ensure that all members support that at a minimum level (much like the WisTAF assessment). They may, of course, and should support in other ways, but this ensures that all members do so.

5. List of activities that the Court would have to administer and fund if the petition were adopted/the Bar was voluntary; current costs by the Bar have not been calculated, but if the Court were required to do them, it would cost more as Court staff would need to be added, and today these functions are currently provided by the Bar's existing staff
 - a. Collection of dues
 - b. Publication of notices in the Wisconsin Lawyer
 - c. Dues suspensions
 - d. registers and administers fees for LLC/LLP/SC law firms
 - e. official repository for paper copies of dues payments, trust account certificates and other information for all attorneys, including retrieval of records as required.
 - f. maintains official registry of licensed Wisconsin attorneys
 - g. collects and remits mandatory fees imposed by the Supreme Court for the Office of Lawyer Regulation, the Board of Bar Examiners, the Client Security Fund, and WisTAF)

6. The Petition, if adopted, addresses neither the associational concerns nor judicial efficiency
 - a. The Court will be required to administer and fund many activities that are currently funded by the Bar
 - b. Even if this Court approves additional activities, either by adding to the list that Mr. Levine has proposed or on an ad hoc basis (under the catchall provision), any member who disagrees as to whether that activity complies with *Keller* will, as a matter of federal constitutional law, have the right to challenge
 - c. Core regulatory and judicial system functions are addressed not just by this Court but also by the Legislature. The Petition would prohibit the Bar from taking positions on those activities when before the Legislature, including e.g., judicial salaries, funding for circuit courts, funding for the state public defender, etc.

7. The State Bar of Wisconsin has been held up as a model in Keller compliance nationally
 - a. The Nebraska objectors recommended our procedure to that Court
 - b. California, Michigan, Nebraska, North Dakota, South Dakota, Nat'l Conference of Bar Presidents, Nat'l Assoc. of Bar Executives, ABA, Arizona, Puerto Rico