

Jan Marks

From: Steven Levine <steven.levine@charter.net>
Sent: Monday, March 17, 2014 10:59 AM
To: Board of Governor
Cc: Board of Governor; Shirley Abrahamson; Julie Rich; George Brown; pfiedler@axley.com
Fiedler; Roberta F. Howell
Subject: [bog] cost of attorney for 13-07 and 13-13

Ms. Lynda Tanner
Assistant Executive Director
State Bar of Wisconsin

Hi Lynda,

Thank you so much for providing me with the information that the State Bar was billed \$27,688.70 by a private law firm for its services in writing a legal brief (21 pages plus appendix) and appearing before the supreme court in combined rulemaking dockets 13-07 and 13-13. Although George hasn't gotten back to me with the hourly rates on which that bill was based, I want to thank you for providing me with this information. As a member of the Board of Governors representing District 9, I have three reactions:

1. The sum of \$27,688.70 seems excessive and wasteful. The State Bar has a number of attorneys on staff. President Fiedler and Governor Dall'Osto participated in the Supreme Court proceedings. These proceedings (13-07 and 13-13) were rulemaking, not litigation, yet outside counsel was retained. The sum of \$27,688.70 might have done some real good if contributed to the Equal Justice Fund, a legal services organization which provides legal services to those who cannot afford them, or the Wisconsin Law Foundation. In my opinion, the expenditure of this large amount of State Bar funds at a time of scarce resources and a potential membership dues increase was neither wise nor reasonable. (To be clear, my criticism is not of the law firm retained by the Bar. Its lawyers did an admirable job. My criticism is of the Bar for spending such a large sum on dockets 13-07 and 13-13.)
2. The purpose for which this large sum was spent is just as disturbing as its size. As explained by President Fiedler at the Board of Governors' January 31, 2014, meeting, outside counsel was retained because a constitutional issue was involved. I assume that constitutional issue was the question of whether the Board of Governors' (BOG) has the authority to remove a governor because of the exercise of his or her First Amendment rights of speech, association, or advocacy. To spend a large amount of money to advocate the Board's authority to remove a BOG member (for conduct contrary to the best interest of the State Bar) because of the exercise of that member's First Amendment rights is both sad and demonstrates some skewed priorities. If the Board of Governors of the State Bar of Wisconsin will not respect the First Amendment rights of its own members, how can the Board expect the public to respect the First Amendment rights of anyone?
3. The process by which outside counsel was retained seems suspect and perhaps was without proper authority. At the January 31, 2014, Board meeting, President Fiedler (in response to a question from Governor Zales) stated that he approved the retention of outside counsel at the request of Executive Director Brown. Yet, "the affairs of the association shall be managed and directed by a board of governors. . . ." See SCR 10.05(1) and (4) (listing the functions of the BOG). The Executive Committee is authorized to act for the BOG between Board meetings. SCR 10.06(2). I can't find any Supreme Court rule or State Bar bylaw which explicitly authorizes the State Bar President to approve the hiring of outside counsel. To my knowledge, neither the BOG nor the Executive Committee were either consulted or informed prior to the hiring of outside counsel for these

rulemaking proceedings. This secrecy seems antithetical to the purposes of a quasi-public association such as the State Bar. Had either the BOG or Executive Committee been consulted, perhaps a different judgment might have prevailed.

When I and 26 other State Bar members filed our petition asking the Supreme Court to review the newly adopted (on June 12, 2013) Bar bylaws concerning removal of officers and BOG members for conduct contrary to the best interest of the State Bar, we had no idea that the Bar would open the floodgates of Bar money in an all-out effort to advocate the BOG's right to remove a Board member for the exercise of his or her First Amendment rights. What a waste of State Bar resources for a sad cause. I do not believe the State Bar membership will look kindly on how the State Bar has handled this entire matter.

Again, thank you for providing me with this information. And good luck in your new position. Everyone will miss your ability, integrity, and smile.

Best Wishes,

/s/ Steven Levine

Steve Levine

cc: all Justices, re dockets 13-07 and 13-13

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