

**THE STATE BAR OF CALIFORNIA
TEST FOR CHARGEABILITY
AND
SUMMARY OF STATE BAR ACTIVITIES
PERMITTED AND PROHIBITED UNDER BROSTERHOUS ANALYSIS
(Distribution authorized by the Board of Governors February 5, 2000)**

***This summary of the opinion issued by Judge England in the first phase of the Brosterhous trial is provided to assist in assessing the impact of Brosterhous on State Bar activities. However, it should be noted that the State Bar disagrees with Judge England's analysis and application of the Keller standard and plans to appeal the decision.

A. Test for chargeability under Keller:

Under Keller, members could be charged for activities necessarily or reasonably related to either:

1. the regulation of the legal profession; or
2. improving the quality of legal service available to the people of the State.

B. Test for chargeability under Brosterhous trial court decision:

Under the trial court's much narrower test for activities that can permissibly be charged to members chargeable items must have a simple, direct connection to either:

1. regulation of the legal profession; or
2. services provided by an attorney to his or her client.

Under the trial court's chargeability test, permissible activities must have a strong connection to the Bar's core functions: discipline, ethics, education or internal governance. In the legislative arena, bills must have a strong direct connection to regulation of the profession or improvement of the services provided by an attorney to his or her client. Bills approved by the trial court were technical and noncontroversial, and dealt with topics such as an increased filing fee for law libraries, mandatory fee arbitration, and fax service.

Activities found nonchargeable by Brosterhous trial court decision:

1. Bar Services

- a. All liaison activities with local bar associations.
- b. Production of an inventory that surveyed local bars concerning the number of members they had, the amount of dues they charged, and the types of activities they sponsored.
- c. Production of a State Bar directory listing local bar associations, a who-to-contact list of State Bar staff, and listing of the Board of Governors.

2. Access Committees

- a. Activities sponsored by the State Bar's access committees directed at helping ethnic minority

or women attorneys ."achieve personal success in .the practice of law."

b. Mentoring programs designed for use by law firms.

c. A survey of women lawyers in the state-

d. A statewide Minority Attorneys Conference with topics such as "client development for minority law firms," "building a solo practice," "how to become a judge," and "how to become a partner in a majority law firm."

3 .Bar Leaders Conference

The court found the entire conference, which it characterized as a means of bringing various bar leaders together to discuss issues of common interest, nonchargeable. This ruling was based on the court's view that voluntary bars engage in political and ideological activity.

4. Conference of Delegates

The court found all activities related to the Conference of Delegates nonchargeable. The court found that the entire process of developing and debating resolutions was political, without analyzing individual resolutions, many of which dealt with areas such as Rules and Procedures of Court, and the Code of Civil Procedure.

5 Legislation

Here the Court found bills nonchargeable if they had any hint of political or ideological content or if they were not closely related to regulation of the profession or improvement of the quality of legal service provided by a lawyer to his or her client. Included among the bills found nonchargeable were:

a. A bill which proposed to delete the sunset date in a statute that allowed parties to a contract, agreement or undertaking arising out of a transaction of at least \$250,000 to designate the law of California to govern the transaction, regardless of whether it had any relation to the state.

b. A clean-up bill for various code sections relating to liability of directors of non-profit corporations.

c. .A bill which would provide parties the choice of submitting worker's compensation issues to binding arbitration before an arbitrator agreed to by the parties.

d. Any lobbying on federal legislation including a bill regarding the potential split of the Ninth Circuit and a bill which proposed increasing federal judicial salaries.

6. Volunteers in Parole

Despite unrefuted testimony which showed a connection to reduced recidivism among youthful parolees, the court found this mentoring program which matches volunteer lawyers with parolees from the California Youth Authority nonchargeable because it is a "social program with ideological coloration."