



By Robert A. Kutcher

Serving the Public; Serving the Profession

On Aug. 1, 2019, one of our members sued the Louisiana State Bar Association (LSBA), the Louisiana Supreme Court and the individual Justices alleging that the mandatory bar structure of the LSBA, which has been in place since 1941, is a constitutional violation of the 1st and 14th Amendments. There are more than 30 mandatory bars in the United States. This is not an isolated claim, and we are not the only state which has been sued. Substantially similar claims have been filed against the states of Wisconsin, North Dakota, Oregon, Oklahoma, Texas and Michigan. The Phoenix, Ariz.-based Goldwater Institute is working with the plaintiffs in a number of these suits, including the one here in Louisiana.

The LSBA is in full compliance with the law. Mandatory membership in a state bar and payment of compulsory fees were held constitutional in *Keller v. State Bar of California*, 496 U.S. 1 (1990), and *Lathrop v. Donohue*, 367 U.S. 820 (1961), and the LSBA operates in accordance with these decisions. The LSBA's legislative advocacy, which is a target of the litigation, is subject to a number of provisions set forth in the Association's Bylaws. These activities are limited to matters involving issues affecting the profession, the regulation of attorneys and the practice of law, the administration of justice, the availability and delivery of legal services to society, the improvement of the courts and the legal profession, and such other matters consistent with the mission and purposes of the Association.

In accordance with *Keller*, we have

a remedy available if any member takes issue with the Bar's legislative activities. Our reimbursement policy is available on our website. The total cost of our legislative activities amounts to less than \$3 per member per fiscal year.

The goal of all of these lawsuits is to obtain a ruling from the U.S. Supreme Court holding that all mandatory bars are unconstitutional, employing the same analysis as that which the Supreme Court applied in the case of *Janus v. American Federation of State, County and Municipal Employees, Council 31*. The distinctions between labor unions and bar associations, which regulate the practice of law, are obvious and do not need discussion here, but that is the goal of all of these actions.

Most recently, as directed by the U.S. Supreme Court, the 8th Circuit reconsidered its earlier dismissal of a challenge to the North Dakota State Bar in light of *Janus*. After reconsideration, the 8th Circuit concluded that *Janus* did not alter its prior grant of summary judgment in favor of the Bar.

In Louisiana, our Association and the Louisiana Attorney Disciplinary Board and its Office of Disciplinary Counsel are charged with assisting the Supreme Court in the regulation of the practice of law. The Supreme Court has the sole authority to regulate the practice of law in this state. Through these and other efforts, we have helped to ensure that our profession continues to be self-regulated and that Louisiana lawyers continue to have a voice in the administration of the practice of law. It is both an honor and obligation which we willingly accept.

We also recognize that we live and

practice in a changing world. Toward that end, at our Annual Meeting in June, the House of Delegates voted to suspend the Legislation Committee and all related legislative activities until the Midyear Meeting in January 2020 and also voted to require that all future House policies be approved only upon a vote of 75% of the House. The latter requires an amendment to the Articles of Incorporation, which must be voted on by the members. That proposal will be on our fall election ballot.

Additionally, on June 11, 2019, long before this litigation was instituted, a committee was formed to review all of the House of Delegates' policies and assess their appropriateness for a mandatory bar. I fully expect that this committee's work will be presented at the House of Delegates meeting in January.

Our Bar works diligently to ensure competency, professionalism and engagement of Louisiana lawyers. Our CLE programming includes seminars on numerous topics, many of which are offered at little to no cost to our members. Through administration of both MCLE and legal specialization, we assist the Supreme Court in ensuring the competency of practicing attorneys. We are committed to protecting the public by promoting the highest standards of ethical conduct and by addressing the unauthorized practice of law. We offer a number of free practice resources through our Practice Management Program, while Fastcase provides LSBA members with free legal research. All of these programs come with our membership.

We also have an extensive Access to Justice Program which helps facilitate the provision of civil legal services to

indigent and working-poor Louisiana citizens. Our fellow citizens rely on us to help them navigate a complex and vitally important body of laws and justice. Through collaboration with the Louisiana Bar Foundation, Louisiana law schools, private practitioners, local bar associations, pro bono programs and legal aid providers, the LSBA supports a broad-based and effective justice community. As lawyers, we all have an obligation to help. This profession should be much more than a paycheck.

During the past 12 months, our Board of Governors went through an exhaustive planning process and developed the following goals to move our Bar forward in the coming years:

▶ The LSBA preserves self-regulation and self-governance through

our mandatory bar in service to the public and the profession.

▶ The LSBA cultivates professionalism, collegiality and quality of life among its members to improve the quality of practice and respect for the profession.

▶ The LSBA helps foster inclusion and participation by the diversity of its members and works to satisfy the unique needs of all members.

▶ The LSBA expands access to justice.

▶ The LSBA improves public trust and confidence in the legal system and its participating judges and lawyers.

▶ The LSBA has the financial, governance and organizational capacity to serve its vision.

We are firmly committed to

accomplishing these goals, and, collectively, we can use our combined influence to advance and improve the legal profession and to safeguard shared principles including protection of the public and promotion of access to justice for all.

“Serving the Public; Serving the Profession” is more than a tagline. Since 1941, it is who we are and what we do. The mandatory structure has served us well for nearly 80 years. We will strongly defend it so that we may continue to fulfill our mission for the lawyers and all citizens of Louisiana.

I encourage everyone to visit our website at www.lsba.org to learn more about this pending litigation and the litigation in other states. More importantly, visit our website and see what the LSBA can do for you. We offer a lot.



#yourLSBA: A Pro Bono Hero

Providing Justice for ALL

“ Doing pro bono work is the ultimate leveling experience, as it is both gratifying and humbling. It only takes an hour at the Lafayette Bar Association’s Counsel on Call program or one meeting with a pro bono client to remember how petty my own perceived problems are. I guarantee that every day you help those in need will be a better day (for you and the beneficiary) because of it. ”

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