

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

MARK E. SCHELL,)	
)	Civil Case No. 5:19-cv-00281-HE
Plaintiff,)	
)	
v.)	
)	
NOMA GURICH, Chief Justice of)	
the Oklahoma Supreme Court, et al.,)	
)	
Defendants.)	
)	

**DEFENDANTS’ UNOPPOSED MOTION TO DISMISS
PLAINTIFF’S THIRD CLAIM FOR RELIEF PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 12(c)**

Defendants file this unopposed motion to dismiss Plaintiff Mark E. Schell’s Third Claim for Relief under Federal Rule of Civil Procedure 12(c), because the claim is moot.

The Court previously dismissed Plaintiff’s First and Second Claims for Relief, which alleged that compelled membership in the Oklahoma Bar Association (“OBA”) and mandatory OBA dues violate the First and Fourteenth Amendments. *See* Order [Doc. 61]. Plaintiff’s only remaining claim is his Third Claim for Relief, which challenges the OBA’s policies for addressing members’ objections to the OBA’s uses of members’ mandatory dues that were in effect at the time that he filed his Amended Complaint (i.e., on May 15, 2019). *See* Amended Complaint [Doc. 19] at ¶¶ 119-128.

On March 5, 2020, and March 9, 2020, the OBA Board of Governors voted to replace the procedures Plaintiff challenges in his Third Claim for Relief with a new “*Keller*

policy,” a true and accurate copy of which is attached hereto as Exhibit 1.¹ The Court may take judicial notice of this new policy in ruling on a motion to dismiss under Rule 12(c). *See Cornforth v. Fidelity Investments*, No. CIV-16-173-R, 2017 WL 650132, *2 (W.D. Okla. Feb. 16, 2017) (court considering 12(b) or (c) motion “may ‘take judicial notice of ... facts which are a matter of public record’”) (quoting *Tal v. Hogan*, 453 F.3d 1244, 1265 n. 24 (10th Cir. 2006)).

The parties agree that the adoption of this new policy renders Plaintiff’s challenge to the previous policy moot and that Plaintiff’s Third Claim for Relief therefore should be dismissed. The parties also agree that dismissal of this claim as moot would be entirely without prejudice to: (1) any future challenge to the new *Keller* procedures or their application; and (2) Plaintiff’s right to appeal the Court’s dismissal of his First and Second Claims for Relief. The parties further agree that, if Plaintiff’s Third Claim for Relief is dismissed as moot, each party should bear its own costs and fees with respect to litigation of that claim, without prejudice to any party’s ability to pursue an award of costs and fees with respect to litigation of Plaintiff’s other claims in this case.

Plaintiff’s counsel has reviewed this motion and stated to Defendants’ counsel that the Plaintiff does not oppose it.

WHEREFORE, Defendants respectfully ask the Court to dismiss Plaintiff’s Third Claim for Relief.

¹ *See* www.okbar.org/governance/.

Respectfully submitted,

/s/ Heather L. Hintz

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of March, 2020, I filed the attached document with the Clerk of Court. Based on the records currently on file in this case, the Clerk of Court will transmit a Notice of Electronic Filing to the following:

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