

AGENDA ITEM

MARCH 155

**Richard Coleman
Emergency Petition to
Correct Fee Statement
Notice to Members**

DATE: February 12, 2010

TO: Members, Board of Governors
Members, Member Involvement Relations and Services Committee

FROM: Starr Babcock, Senior Executive Member Services
Dina Goldman, Attorney, Office of General Counsel

SUBJECT: Richard Coleman -- Emergency Petition to Correct Fee Statement Notice to Members

EXECUTIVE SUMMARY

Richard Coleman is a member who has asked that his Emergency Petition be presented to the Board of Governors. Mr. Coleman's petition, a copy of which is attached as Exhibit 1, asks the Bar to correct the instructions that appear in the 2010 fee statement. Mr. Coleman contends that the instructions on the fee statement are misleading because they do not make it clear that members are not required to make the recommended donation to the Access to Justice Fund.

The fee statement was designed based on Board action taken in 2007. At that time, the Board determined, based on a recommendation from the State Bar Task Force on Lawyer Support for Legal Services, that the fee statement should include a recommended \$100 Access to Justice Fund donation, that the suggested donation should be included in a subtotal printed on the statement, and that there should also be an obvious way for members to adjust their donation, including making no donation at all. A copy of the 2007 Board item directing this action is attached as Exhibit 3.

Staff recommends that the Board deny Mr. Coleman's request for a correction because the 2010 fee statement does offer a clear way for members to opt out of the suggested Access to Justice Fund donation. A copy of the 2010 fee statement is attached as Exhibit 2. The instructions on bottom of the fee statement allow members to either choose a subtotal that has the suggested donation included or an alternate subtotal that includes a different or no suggested donation. Thus the current fee statement is not misleading and it would create more confusion to issue alternate instructions at this late date. However, the Bar can consider Mr. Coleman's suggestions in designing the 2011 fee statement.

BACKGROUND

Member Richard Coleman has filed an Emergency Petition asking the Bar to “take immediate action to correct the misleading and deceptive instruction contained in the dues bill sent to all members.” Mr. Coleman’s petition is attached as Exhibit 1. The 2010 fee statement includes an initial subtotal of the total membership fees owed by a member on line 9. Unless additional fees or costs are added for a particular member, this line would generally be \$410. Line 10 includes a recommended Access to Justice Fund donation of \$100. Line 11 contains a subtotal including the recommended \$100 donation, which generally totals \$510. Line 12 allows a member to enter more or less than the recommended donation and line 13 provides a separate place to subtotal if a member chooses not to donate to the Access to Justice Fund. A copy of the 2010 fee statement is attached as Exhibit 2.

The instructions on the fee statement advise that a member should choose line 11 or line 13 as a subtotal and add it to the total of other additions and deductions that appear on the fee statement such as Sections dues, other donations, and the optional deductions offered by the Bar. Thus, a member is clearly told to choose either the subtotal which includes the recommended Access to Justice donation or the alternate subtotal which would allow the member to reduce or increase the suggested donation.

The form of the fee statement is consistent with Board action taken in 2007. At that time, the Board determined, based on a recommendation from the State Bar Task Force on Lawyer Support for Legal Services, that the fee statement should include a recommended \$100 Access to Justice Fund donation, that the suggested donation should be included in a subtotal printed on the statement, and that there should also be an obvious way for members to adjust their donation, including making no donation at all. A copy of the 2007 Board item directing this action is attached as Exhibit 3.

ISSUE

Should the Board grant Mr. Coleman’s emergency petition and take immediate action to correct the instructions which appear on the 2010 fee statement?

CONCLUSION

The Board should deny Mr. Coleman’s petition.

DISCUSSION

The instructions on the 2010 fee statement are not misleading and do offer a clear way for members to opt out of the suggested Access to Justice Fund donation. The form of the 2010 fee statement is consistent with the direction given by the Board when they considered the issue in 2007. The Board decided that the fee statement should contain a recommended Access to Justice Fund donation and that the donation should appear

on a separate subtotal line. The Board also determined that there should be a clear option for a member to donate more or less than the recommended donation or make no donation at all.

The instructions on the bottom of the fee statement are consistent with this Board directive. They allow members to either choose a subtotal that has the suggested Access to Justice Fund donation included or an alternate subtotal that allows the member to include a different or no suggested donation. Thus the current fee statement is not misleading and it would create more confusion and cost to issue alternate instructions at this late date. However, the Bar can consider Mr. Coleman's suggestions in designing the 2011 fee statement.

FISCAL / PERSONNEL IMPACT: \$84,000 for postage alone assuming a bulk discount. There would be additional expenses for paper, envelopes and production.

RULE AMENDMENTS: None

BOARD BOOK/ ADMINISTRATIVE MANUAL IMPACT: None

RECOMMENDATION

Staff recommends that the Board deny Mr. Coleman's request for a correction because the instructions to the 2010 fee statement are not misleading.

PROPOSED BOARD COMMITTEE RESOLUTION:

Should the board committee agree with the above recommendation, the following resolution would be appropriate:

RESOLVED, that the Board Committee on Member Involvement Relations and Services recommends that the Board deny the Emergency Petition of member Richard Coleman.

PROPOSED BOARD RESOLUTION:

Should the Board concur with the board committee's recommendation, the following resolution would be in order:

RESOLVED, that upon the recommendation of the Board Committee on Member Involvement Relations and Services, the Board hereby denies the Emergency Petition of member Richard Coleman.