

# AGENDA ITEM

54-112 September 13, 2014

**DATE:** August 25, 2014

**TO:** Members, Board Committee on Operations  
Members, Board of Trustees

**FROM:** Peggy Van Horn, Chief Financial Officer  
Ray Farrish, Finance Manager, Member Billing

**SUBJECT:** 2015 Membership Fees – Schedule of Fees, Penalties, Charges and Deadlines

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## EXECUTIVE SUMMARY

This item provides for setting the 2015 membership fees in a total amount of \$430 for an active member or \$155 for an inactive member, as permitted under California Business and Professions Code section 6140 et seq. It also provides for other costs, penalties and deadlines in 2015.

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## BACKGROUND

California Business and Professions Code requires that each year the Board of Trustees fix the amount of the annual membership fees not exceeding the amounts specified in section 6140<sup>1</sup> for active members and in section 6141 for inactive members plus other specified amounts in related provisions. Under AB 2746<sup>2</sup> the total membership fees may not exceed \$430 for active members and \$155 for inactive members. In this item, the Board will set the fees, costs, and penalties for 2015, as described below and listed in the Schedule of Charges and Deadlines. (Attachment 1)

## DISCUSSION

### Annual Membership Fees

Under AB 2746, effective January 1, 2015, the State Bar will be authorized to assess and include as part of the annual membership fee the following amounts:

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<sup>1</sup> All statutory references are to the California Business and Professions Code unless otherwise indicated.

<sup>2</sup> The Legislature passed AB 2746 on August 27, 2014, and will become law when signed or if not returned by the Governor on or before September 30. Cal. Const. art. IV, § 10(b)(2).

| Active Members   |                           |           |
|------------------|---------------------------|-----------|
| Source           | Purpose                   | \$ Amount |
| § 6140           | General                   | 315       |
| § 6140.03        | Legal Services Assistance | 40        |
| § 6140.55        | CSF                       | 40        |
| § 6140.6         | Discipline                | 25        |
| § 6140.9         | LAP                       | 10        |
| Total Active Fee |                           | 430       |

| Inactive Members   |                           |           |
|--------------------|---------------------------|-----------|
| Source             | Purpose                   | \$ Amount |
| § 6141             | General                   | 75        |
| § 6140.03          | Legal Services Assistance | 40        |
| § 6140.55          | CSF                       | 10        |
| § 6140.6           | Discipline                | 25        |
| § 6140.9           | LAP                       | 5         |
| Total Inactive Fee |                           | 155       |

The active and inactive membership fees may be reduced as follows:

**\$10 Deduction for Legislative and Bar Relations under Keller**

Keller v. State Bar of California, 496 U.S. 1 (1990), prohibits the State Bar from charging as part of mandatory bar dues the expenses of any political or ideological activities not reasonably related to regulating the legal profession or improving the quality of legal services in California. Since 2000, the Board has provided a total deduction of \$10 that a member of the State Bar may deduct from the annual membership fee for purposes of Keller. This deduction consists of: (1) \$5 for State Bar lobbying and related activities is required under § 6140.05 and (2) \$5 for the State Bar’s Bar Relations and Elimination of Bias programs provided by the Board. The total amount that the State Bar may expend in either area is limited to the voluntary fees paid by those members not taking the deductions.

**\$40 Legal Services Assistance**

As amended by AB 2746, § 6140.03, provides \$40 will be added and allocated from the annual membership fees only for the purposes established pursuant to § 6033, except to the extent that a member elects not to support those activities. The financial support is for nonprofit organizations that provide free legal services to persons of limited means. Members electing not to support the funding of legal services to persons of limited means may deduct the \$40 from his or her membership fees.

### **Waiver of Membership Fees (“Scaling”)**

Under § 6141.1, an active member who has a total gross annual individual income from all sources of less than \$40,000 may request to scale or reduce annual membership fees by 25%.

### **Penalties**

#### **Late Payment Penalties**

Under § 6143, the Board is authorized to impose penalties on any member, active or inactive, for failing to pay any fees, penalties or costs after they become due. Rule 2.13 of the Rules of the State Bar provides that “Late payment of annual membership fees is subject to the penalties set forth in the Schedule of Charges and Deadlines.” (Attachment 1) Rule 2.33(C) further imposes a reinstatement fee—in addition to accrued fees, penalties, and costs—that a suspended member must pay in order to terminate the suspension for nonpayment. Normally the penalty is assessed on February 2 (the day following the statutory due date of February 1) in the amount of \$100 for active fees and \$30 for inactive fees. For 2015, staff recommends that the penalty be assessed on February 3, 2015 (February 1, 2015 is a Sunday, therefore the payment deadline will be February 2, 2015). This assessment shall also apply for all members, other than new admittees, who were billed on or after December 21, 2013 and have not paid their 2014 membership fees.

#### **MCLE Noncompliance and Reinstatement from MCLE Inactive Enrollment**

Rule 2.71 of the Rules of the State Bar pertaining to member compliance with Minimum Continuing Legal Education requirements provides that “Fees for noncompliance are set forth in the Schedule of Charges and Deadlines.” (Attachment 1) These include fees set by the Board for MCLE noncompliance and for reinstatement to terminate MCLE inactive enrollment, which are then included in the Schedule of Charges and Deadlines. The amount recommended for the MCLE noncompliance fee is \$75. The amount recommended for the reinstatement fee is \$200. These fee amounts are unchanged from prior years.

#### **Interest on Client Security Fund Reimbursements**

Under § 6140.5(c), the Board is authorized to set an applicable interest rate for Client Security Fund (CSF) reimbursement costs. The Board has set this interest rate at 10% and CSF staff requests that the 10% annual interest rate be retained and calculated from the date of disbursement in 2015. The CSF reimbursement amount, plus any applicable interest rates and costs become part of the membership fee.

#### **Penalty for Non-Compliance with Mandatory Fee Arbitration Awards**

The Board is authorized under § 6203(d)(3) to impose an administrative penalty on an attorney who in a fee dispute with a client has failed to comply with a binding arbitration award, judgment, or agreement, not to exceed 20% of the amount ordered refunded to the client or \$1,000, whichever is greater. The Board in its discretion may also require an attorney to pay the reasonable costs of the arbitration. The non-compliance penalty and costs become part of the membership fee for the next calendar year.

### **Fees and Late Payment Penalties for 2015 New Admittees**

All new members when first admitted to the practice of law are enrolled as active members. (§ 6004; Rules of State Bar, Rule 2.12.) Within 45 days of the invoice date from the State Bar, new admittees must pay initial active fees. For new admittees in 2015, Rule 2.12 provides for the following initial membership fees: full annual fees (\$430) if admitted between January 1 and May 31, 2015; one-half the annual fee (\$215) if admitted between June 1 and November 30, 2015. Staff recommends that a late payment penalty for new admittees in 2015 be assessed as follows: \$100 for those admitted between January 1 and May 31, 2015, and \$50 for those admitted between June 1 and November 30, 2015.

### **Timing of Non-Payment Suspension Process**

For the 2015 billing year, staff recommends that the initial mailing be sent to members by December 1, 2014 and members who have not paid as of the statutory deadline of February 1, 2015 (February 2, 2015 due to February 1, 2015 falling on a Sunday), be assessed one late payment penalty. A final delinquent notice will be mailed to all unpaid members on March 6th. The list of unpaid members will be submitted to the Board for approval to forward the names to the Supreme Court for suspension two months after the mailing of the final delinquent notice.

### **FISCAL / PERSONNEL IMPACT:**

The 2015 proposed budget and financial forecasts are based on the assumption that the active fee will be \$430 and that the inactive fee will be \$155. The plan takes into consideration the \$5 lobbying deduction, the \$5 bar relations and elimination of bias deduction and the \$40 legal services assistance deduction that are available to members.

### **RULE AMENDMENTS:**

This agenda item would revise the Schedule of Charges and Deadlines, which appears at Appendix A of the Rules of the State Bar, in the form contained in Attachment 1.

### **BOARD BOOK IMPACT:**

None

### **RECOMMENDATION**

Staff recommends that 2015 annual membership fees be set at \$430 for active members and \$155 for inactive members, and the late payment penalties imposed on delinquent 2015 membership fees and delinquent 2014 membership fees of all members, other than new admittees, who were billed on or after December 21, 2013, be assessed on February 3rd at \$100 for active members and \$30 for inactive members.

Staff also recommends that the MCLE noncompliance fee be set at \$75, and the reinstatement fee to terminate MCLE inactive enrollment be set at \$200. Staff further recommends that the annual interest rate for Client Security Fund reimbursements be set at 10% annually calculated from the date of disbursement, and that an administrative penalty not to exceed 20% of the amount ordered refunded to the client or \$1,000, whichever is greater, be imposed on an attorney who failed to comply with a binding arbitration award.

**PROPOSED BOARD COMMITTEE RESOLUTION:**

Should the Board Committee on Operations agree with the above recommendation, the following resolution would be appropriate:

**RESOLVED**, that the Board Committee on Operations recommends that, subject to AB 2746 becoming law and effective January 1, 2015, the Board set the annual membership fee for active members in 2015 at \$430 and the annual membership fee for inactive members at \$155; and it is

**FURTHER RESOLVED**, that the total Keller deduction for the 2015 annual membership fee be set at \$10, which includes \$5 for legislative activities under Business and Professions Code section 6140.05 and \$5 for activities in the Bar Relations and Elimination of Bias programs; and it is

**FURTHER RESOLVED**, that for the Legal Services Assistance Fee under Business and Professions Code section 6140.03, a \$40 deduction from the annual membership fee be provided to each member who elects not to have this amount allocated to support nonprofit organizations that provide free legal services to persons of limited means; and it is

**FURTHER RESOLVED**, that the penalties imposed on delinquent 2015 annual membership fees be set at \$100 for active members and \$30 for inactive members; and it is

**FURTHER RESOLVED** that the penalties on delinquent 2014 annual membership fees for all members, other than new admittees, billed on or after December 21, 2013 be set at \$100 for active members and \$30 for inactive members; and it is

**FURTHER RESOLVED**, that said penalties in the preceding paragraphs be assessed on February 3, 2015; and it is

**FURTHER RESOLVED**, that the reinstatement penalties for members to terminate suspension for nonpayment of accrued fees, penalties, and/or costs be set at \$100; and it is

**FURTHER RESOLVED**, that the membership fees for new members admitted in 2015 be set as follows: fees of \$430 for those admitted between January 1 and May 31, 2015 and \$215 for those admitted between June 1 and November 30, 2015; and it is

**FURTHER RESOLVED**, that late payment penalties for new members admitted in 2015 be assessed and set on the 46th day from the invoice date as follows: \$100 for those admitted between January 1 and May 31, 2015, and \$50 for those admitted between June 1 and November 30, 2015; and it is

**FURTHER RESOLVED**, that the MCLE noncompliance fee be set at \$75 and the reinstatement fee to terminate MCLE inactive enrollment be set at \$200 for 2015; and it is

**FURTHER RESOLVED**, that the interest on assessed costs for reimbursement to the Client Security Fund be set at 10% annually calculated from the date of disbursement as set forth by the Board, pursuant to Business and Professions Code §6140.5(c); and it is

**FURTHER RESOLVED**, that the administrative penalty on failure to comply with binding arbitration is charged at a fee not to exceed 20% of the amount ordered refunded to the client or \$1,000 whichever is greater.

#### **PROPOSED BOARD OF TRUSTEES RESOLUTION:**

Should the Board concur with the Board Committee on Operations's recommendation, the following resolutions would be in order:

**RESOLVED**, that upon the recommendation of the Board Committee on Operations, and subject to AB 2746 becoming law and effective January 1, 2015, the Board hereby sets the annual membership fee for active members in 2015 at \$430 and the annual membership fee for inactive members at \$155; and it is

**FURTHER RESOLVED**, that the total Keller deduction for the 2015 annual membership fee be set at \$10, which includes \$5 for legislative activities under Business and Professions Code section 6140.05 and \$5 for activities in the Bar Relations and Elimination of Bias programs; and it is

**FURTHER RESOLVED**, that for the Legal Services Assistance Fee under Business and Professions Code section 6140.03, a \$40 deduction from the annual membership fee be provided to each member who elects not to have this amount allocated to support nonprofit organizations that provide free legal services to persons of limited means; and it is

**FURTHER RESOLVED**, that the penalties imposed on delinquent 2015 annual membership fees be set at \$100 for active members and \$30 for inactive members; and it is

**FURTHER RESOLVED** that the penalties on delinquent 2014 annual membership fees for all members, other than new admittees, billed on or after December 21, 2013 be set at \$100 for active members and \$30 for inactive members; and it is

**FURTHER RESOLVED**, that said penalties in the preceding paragraphs be assessed on February 3, 2015; and it is

**FURTHER RESOLVED**, that the reinstatement penalties for members to terminate suspension for nonpayment of accrued fees, penalties, and/or costs be set at \$100; and it is

**FURTHER RESOLVED**, that the membership fees for new members admitted in 2015 be set as follows: fees of \$430 for those admitted between January 1 and May 31, 2015 and \$215 for those admitted between June 1 and November 30, 2015; and it is

**FURTHER RESOLVED**, that late payment penalties for new members admitted in 2015 be assessed and set on the 46th day from the invoice date as follows: \$100 for those admitted between January 1 and May 31, 2015, and \$50 for those admitted between June 1 and November 30, 2015; and it is

**FURTHER RESOLVED**, that the MCLE noncompliance fee be set at \$75 and the reinstatement fee to terminate MCLE inactive enrollment be set at \$200 for 2015; and it is

**FURTHER RESOLVED**, that the interest on assessed costs for reimbursement to the Client Security Fund be set at 10% annually calculated from the date of disbursement as set forth by the Board, pursuant to Business and Professions Code §6140.5(c); and it is

**FURTHER RESOLVED**, that the administrative penalty on failure to comply with binding arbitration is charged at a fee not to exceed 20% of the amount ordered refunded to the client or \$1,000 whichever is greater.