

AGENDA ITEM P&B ITEM IIIB 143 JULY 2017

DATE: July 13, 2017

TO: Members, Planning & Budget Committee
Members, Board of Trustees

FROM: Andrew Conover, Principal Analyst
Office of Research and Institutional Accountability

SUBJECT: Recommendation to Adjust and Align Minimum Continuing Legal Education (MCLE) and Legal Specialization Provider Certification Fees

EXECUTIVE SUMMARY

Minimum Continuing Legal Education (MCLE) and Legal Specialization Provider Certification Fees have not been adjusted in many years. Adjustment and alignment of both types of fees is recommended at this time. The recommended 20 percent fee increase will eliminate the current structural deficit in these programs; alignment of the fee administration process and moving the renewal deadline will increase efficiency for both the State Bar and providers.

BACKGROUND AND METHODS

As part of ongoing fiscal accountability and management work being done in 2017, staff has reviewed a host of fees for service charged by the State Bar including Foreign Legal Consultants, Multi-Jurisdictional Practice, Pro Hac Vice, Practical Training Law Students, Out-of-State Attorney Arbitration Counsel, Law Corporations, Limited Liability Partners, Law School Regulation, Legal Specialization and Minimum Continuing Legal Education Provider Certification. As a result of that process, three fees are being recommended for modification:

- Law School Regulation
- MCLE Provider Certification
- Legal Specialization Certification

The Law School Regulation fee proposal was submitted to the Committee of Bar Examiners for review at its June 23, 2017 meeting; the proposed new fees are being circulated to impacted law schools for comment, with this item slated to come to the BOT at its September meeting.

This memorandum addresses MCLE Provider and Legal Specialization Certification fees.

The method for evaluating and benchmarking fees across all areas has consisted of two components. First, wherever feasible, State Bar fees were compared to fees in other states that operate similar programs. It should be noted that there are sometimes significant differences between programs in California and those in other states that may make these comparisons problematic. Wherever possible, differences between the fee structure and the responsible state

entity in California and in other states were identified and adjusted to make a comparison possible.

The second component of the evaluation consisted of estimating the operating costs for different State Bar programs and determining if revenue from the programs covered these costs. State Bar fees were evaluated relative to the full costs of administering each program, including personnel and overhead. The baseline question for this part of the evaluation is whether fees are set at a level sufficient to recover costs to the State Bar.

In all but three of the programs reviewed so far this year program revenue appears to cover operating costs. The State Bar’s Law School Regulation program and the Minimum Continuing Legal Education (MCLE) and Legal Specialization Provider Certification programs all operate at a deficit. Recommendations for addressing that deficit follow.

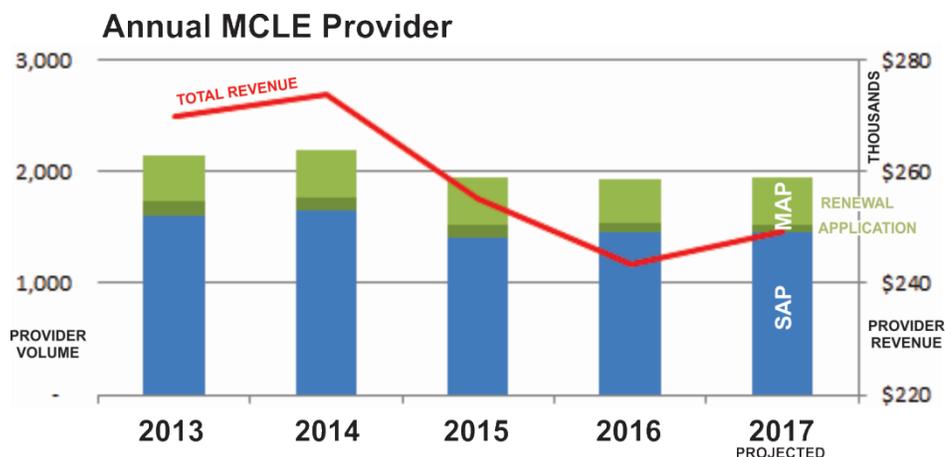
Minimum Continuing Legal Education

With very few exceptions, the State Bar requires active attorneys to complete 25 hours of MCLE every three years (including minimum hours in certain educational categories). Providers of MCLE must be certified by the State Bar to offer courses in California. New providers begin the certification process by applying to offer a single class to attorneys, as a Single Activity Provider (SAP). MCLE providers that successfully offer four approved classes within a three-year period may elect to become certified to offer multiple courses with a single application process, making them a Multiple Activity Provider (MAP).

Fees for MCLE providers differ depending upon whether the provider operates as a SAP or a MAP. Applications for certification to offer a single program (SAP) are currently \$75 and courses may be offered for up to two years if the course material is unchanged.¹ Applications for certification to offer multiple programs (MAP) are \$200 and last for up to two years, depending on the application date. Finally, renewals of MAP certification cost \$300 and last for three years.

State Bar MCLE Provider Certification Revenue and Operating Costs

Revenue received from the MCLE certification process over the last five years averages \$258,415 per year. The table below summarizes the year-to-year fluctuations. Changes in revenue from year to year are driven largely by differences in the provider renewal cycles, however there is a downward trend of new and renewing MAP providers over this five-year period.



¹ Rule or other material changes require recertification.

The current cost to operate this program is \$291,150 per year, reflecting an annual structural deficit of \$41,850. (Detailed cost information is provided as Attachment A.)

The MCLE Provider Certification Program was managed in the Admissions Special Education group until December 31 of last year; its staff and functions have just been transferred to the Member Records and Compliance group. This program is currently managed in the San Francisco office, with two administrative staff and a portion of one supervisor and another senior administrator allotting a portion of their time processing applications and the renewals in addition to other program audit functions.

Comparison of State Bar Fees to Other Jurisdictions

Five jurisdictions (Massachusetts, Michigan, Maryland, South Dakota and the District of Columbia) do not have a Continuing Legal Education requirement. Of the remaining states, 17 reported that providers need not be certified to offer courses and therefore that they do not collect any fees for this purpose. In addition to program fees, some states charge a fee based on usage, either per attendee or per attendee credit hours. For a number of reasons, including difficulty of administration, staff is not recommending charging attendance fees at this time. As a result, those types of structures are not addressed in this memorandum

Of the states that do charge fees, ready comparisons between those structures and California's are complicated by the SAP/MAP distinction. Of the states that do charge something equivalent to a SAP fee, fees assessed range from \$25 to \$150.

Only West Virginia, New Jersey, Illinois, Pennsylvania, Delaware and New Hampshire offer a program similar to our MAP application process, typically referred to as *accredited sponsors*. Four of these jurisdictions charge a flat fee regardless of provider type; Illinois and New Jersey assess fees on a sliding scale, or pre-set fee tiers. For example, Illinois charges \$300 annually to government providers, Lawyers Assistance Program providers and certain non-profits, but up to \$3,000 annually for larger, national and for-profit organizations. New Jersey charges MAP fees based on the number of courses a given provider offers.

SAP certifications represent on average 64 percent of the application volume for Member Records and Compliance staff. Appendix B shows that raising the SAP fee to \$90 will allow the State Bar to recover the costs of processing these applications while ensuring that California's fees remain within the comparable national range.

MAP applications and renewals represent approximately 36 percent of the submission volume staff processes each year. Current MAP fees are set at a level that does not cover the cost of administering the applications process, and they are not in line with other states which charge, at a minimum, an annual fee equivalent to the State Bar's multi-year fee. In addition, most other jurisdictions that assess MAP fees do not have a complicated structure whereby different fees are assessed initially and upon renewal. Staff recommends eliminating this distinction going forward, which will increase the initial application period to a maximum of three years (same as each renewal period)².

² The actual number of months for the initial MAP certification will depend on the date the application is submitted.

Based on the above analysis, staff recommends adoption of the following new SAP and MAP fees:

Current MCLE SAP Fee:	\$75
New MCLE SAP Fee:	\$90
Current MCLE MAP Application Fee:	\$200
Current MCLE MAP Renewal Fee:	\$300
New MCLE MAP Fee:	\$360

Legal Specialization

The Legal Specialization (LS) program certifies attorneys as specialists in certain areas of law. Attorneys who want to become certified must complete 45 hours of education in their specialty field during the three years prior to applying for certification; after becoming certificated they must complete 36 hours of specialization-certified MCLE. The Legal Specialization Provider Certification Program approves the providers and the course content that legal specialists use to comply with these requirements. Activities approved for Legal Specialization credit are also approved for regular MCLE credit. Under the current design of the Legal Specialization certification program there are both SAP and MAP providers similar to the MCLE Provider Certifications.

Operating Revenue and Costs

Revenue received from the Legal Specialization Provider Accreditation process over the last five years averages \$22,950 per year. The table below summarizes the year-to-year fluctuations. Changes in revenue from year to year are driven largely by differences in the provider renewal cycles and although much smaller than the MCLE providers, trending downward in number of total providers participating.



The current cost to operate this program is \$30,667 per year, reflecting an annual structural deficit of \$7,042. (Detailed cost information is provided as Attachment A.)

Comparison to Other States

No other states were found to offer a separate Legal Specialization Provider Accreditation process separately from their MCLE programs, providing no specific benchmark. As the provider accreditation processes are very similar, and both are deemed to be under-funded,

staff recommends that these two programs be combined for the provider registration and certification processes. Not only would this allow for some operational efficiency to be realized with application processing and future attendance reporting, but discounts could be offered for those providers who are currently required to apply to both programs separately. Staff recommends that the fees for MCLE Provider Certification and Legal Specialization Certification be aligned and require that all Legal Specialization providers also be certified to offer MCLE to the broader attorney population. To help mitigate the expense to providers who currently are required to apply to both programs independently, a discount of 75% is recommended for the second (dual) certification³ as follows:

Current LS SAP Fee:	\$75 (Legal Spec only)
New MCLE+LS SAP Fee:	\$112 (dual)
Current LS MAP Application Fee:	\$300 (Legal Spec only)
Current LS MAP Renewal Fee:	\$300 (Legal Spec only)
New MCLE+LS MAP Fee:	\$450 (dual)

In addition to aligning fees, staff anticipates merging the certification responsibilities in Member Records and Compliance, with one group of experienced staff handling both.

Modification of Renewal Dates

Staff recommends that these new fees be effective January 1, 2018, but that the anniversary date for renewals of both MCLE and Legal Specialization Providers be moved from December 31 to June 30 each year. Doing so will more effectively stagger existing workload and allow the State Bar to better utilize staff resources, as well as provide an initial additional six months of certification for providers at no additional cost.

The Legal Specialization Provider Accreditation Program is currently managed in the Special Admissions group in the San Francisco office, with one administrative staff, one supervisor and a Director allotting a portion of their time processing applications and the provider renewals.

FISCAL/PERSONNEL IMPACT

Although extending the MAP renewal dates will defer some revenue into 2018, the recommended 20% fee increase for the MCLE and Legal Specialization Providers is projected to generate an additional maximum \$51,137 combined, and will eliminate the existing structural deficit for both programs. It is difficult to gauge how future provider application volumes will be affected by this recommended fee increase for the variety of current providers.

RULE AMENDMENTS

None.

BOARD BOOK IMPACT

None.

³ Discount for Legal Specialization certification would apply only if processed in a single joint application.

BOARD GOALS & OBJECTIVES

2017-2022 Strategic Plan Goals and Objectives:

(2d) Develop and implement new attorney MCLE requirements and evaluate their impact and effectiveness.

(2e) Develop and implement an effective mechanism for ensuring compliance with MCLE requirements.

(2i) Review special admissions rules (Multijurisdictional Practice, Pro Hac Vice, Registered In-House Counsel, Out of State Attorney Arbitration Counsel, Foreign Legal Consultants, and Practical Training of Law Students Program) to determine whether changes are needed, and implement needed changes.

(3d) Reallocate funds to support the discipline system based on expenditure review, revenue enhancement measures, implementation of the Bar's reserve policy, and other reengineering efforts.

RECOMMENDATIONS

Should the Planning and Budget Committee agree with the above recommendation, the following resolution would be appropriate:

RESOLVED, that the Planning and Budget Committee recommends that the Board of Trustees approve raising the MCLE and Legal Specialization Single Activity Providers fee to \$90; and it is

FURTHER RESOLVED, that the Board of Trustees approve raising the MCLE Multiple Activity Provider application fee to \$360 and increase the initial certification period from two years to a maximum of three years; and it is

FURTHER RESOLVED, that the Board of Trustees require that new Legal Specialization Multiple Activity Providers must also certify as MCLE Providers at \$360 and optionally add the additional certification for Legal Specialization for an additional \$90; and it is

FURTHER RESOLVED, that the Board of Trustees approve raising the three-year MCLE Multiple Activity Provider renewal fees to \$360; and it is

FURTHER RESOLVED, that the Board of Trustees approve raising the renewal fee to \$450 for the Providers who are seeking renewal for both MCLE and Legal Specialization programs.

ATTACHMENT(S) LIST

- A. Internal Resources / Cost Summary
- B. MCLE State Comparison