

# AGENDA ITEM

OCT 54-141

## 2012 Membership Fees – Schedule of Fees, Penalties, Charges and Deadlines

**DATE:** September 23, 2011

**TO:** Members, Planning, Program Development and Budget Committee  
Members, Board of Governors

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

**SUBJECT:** 2012 Membership Fee

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### EXECUTIVE SUMMARY

This item provides for setting the 2012 membership fees in a total amount of \$400 for an active member or \$115 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 2012.

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### BACKGROUND

California Business and Professions Code requires that each year the Board of Governors 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 Senate Bill No. 163 2011-2012 Regular Session (Evans), as passed September 9, 2011 (hereinafter “SB 163”),<sup>2</sup> all members will be provided a one-time reduction of \$10 in 2012 and the total membership fees may not exceed \$400 for active members and \$115 for inactive members. In this item, the Board will set the fees, costs, and penalties for 2012, as described below and listed in the Schedule of Charges and Deadlines. (Attachment 1)

### DISCUSSION

#### *Annual Membership Fees*

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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 bill has been enrolled and will become law if not returned by the Governor by October 9 this year. Cal. Const. art. IV, § 10(b)(1).

Under SB 163, effective January 1, 2012, the State Bar will be authorized to assess and include as part of the annual membership fee the following amounts:

Active Members		
Source	Purpose	\$ Amount
§ 6140	General	\$315
§ 6140.3	Building	\$10
§ 6140.35	Technology Assessment	\$10
§ 6140.55	CSF	\$40
§ 6140.6	Discipline	\$25
§ 6140.9	LAP	\$10
Sub-Total		\$410
One-time rebate		-\$10
Total Active Fee		\$400

Inactive Members		
Source	Purpose	\$ Amount
§ 6141	General	\$75
§ 6140.3	Building	\$10
§ 6140.55	CSF	\$10
§ 6140.6	Discipline	\$25
§ 6140.9	LAP	\$5
Sub-Total		\$125
One-time Rebate		-\$10
Total Inactive Fee		\$115

#### **One-time \$10 Rebate to All Members**

SB 163 includes a one-time \$10 rebate to dues for all members in 2012. As amended by SB 163, § 6140(a) will provide:

The board shall fix the annual membership fee for active members for 2012 at a sum not exceeding three hundred fifteen dollars (\$315) minus a ten dollar (\$10) rebate to be shown as such on the annual dues statement directly below the 2012 membership fee.

Similarly § 6141(a), as amended by SB 163, provides for a one-time \$10 rebate to the fee paid by inactive members.

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

#### **\$10 Deductions 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.

#### **\$20 Temporary Emergency Legal Services Voluntary Assistance Option**

SB 163 increases from \$10 to \$20 in § 6140.01, which will be allocated from the membership dues paid by each member and to the Temporary Emergency Legal Services Voluntary Assistance Option to support nonprofit organizations that provide free legal services to persons of limited means, unless the member elects not to support those activities. Members electing not to support the funding of legal services to the poor may deduct the \$20 from his or her membership fees. The allocation and option to deduct remain in effect through 2013.

#### **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. For 2012, staff recommends that one penalty be 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. This assessment shall also apply for all members, other than new admittees, who were billed on or after December 19, 2010 and have not paid their 2011 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 "[f]ees 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 2012. 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 2012 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 2012, Rule 2.12 provides for the following initial membership fees: full annual fees (\$400) if admitted between January 1 and May 31, 2012; one-half the annual fee (\$200) if admitted between June 1 and November 30, 2012. Staff recommends that a late payment penalty for new admittees in 2012 be assessed as follows: \$100 for those admitted between January 1 and May 31, 2012, and \$50 for those admitted between June 1 and November 30, 2012.

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

For the 2012 billing year, staff recommends that the initial mailing be sent to members by December 1, 2011 and members who have not paid as of the statutory deadline of February 1, 2012, be assessed one late payment penalty. A final delinquent notice will be mailed to all unpaid members on March 7<sup>th</sup>. 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 2012 proposed budget and financial forecasts are based on the assumption that the active fee will be \$400 and that the inactive fee will be \$115, as permitted under the amendments in SB 163 with the one-time rebate of \$10 to all members. The plan takes into consideration the \$5 lobbying deduction, the \$5 bar relations and elimination of bias deduction, and the \$20 temporary emergency legal services voluntary 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 2012 annual membership fees be set at \$400 (\$410 less the one-time \$10 rebate) for active members and \$115 (\$125 less the one-time \$10 rebate) for inactive members, and the late payment penalties imposed on delinquent 2012 membership fees and delinquent 2011 membership fees of all members, other than new admittees, who were billed on or after December 19, 2010, be assessed on February 2nd 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 Planning, Program Development and Budget Committee agree with the above recommendation, the following resolution would be appropriate:

**RESOLVED**, that the Planning, Program Development and Budget Committee recommends that the Board, subject to SB 163 becoming statute and effective January 1, 2012, the Board of Governors set the annual membership fee for active members in 2012 at \$400 (\$410 minus the \$10 one-time rebate) and the annual membership fee for inactive members at \$115 (125 minus the \$10 one-time rebate); and it is

**FURTHER RESOLVED**, that the total Keller deduction for the 2012 annual membership fee be set at \$10, which shall include \$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 under the Temporary Emergency Legal Services Voluntary Assistance Option in Business and Professions Code section 6140.01, a \$20 deduction from the annual membership fee is to be provided to each member if the member 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 2012 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 2011 annual membership fees for all members, other than new admittees, billed on or after December 19, 2010 be set at \$100 for active members and \$30 for inactive members; and it is

**FURTHER RESOLVED**, that said penalties in the preceding paragraphs shall be assessed on February 2, 2012; 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 2012 be set as follows: fees of \$400 (\$410 minus the \$10 one-time rebate) for those admitted between January 1 and May 31, 2012 and \$200 for those admitted between June 1 and November 30, 2012; and it is

**FURTHER RESOLVED**, that late payment penalties for new members admitted in 2012 be assessed and set on the 46th day from the invoice date as follows: \$100 for those admitted between January 1 and May 31, 2012, and \$50 for those admitted between June 1 and November 30, 2012; 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 2012; 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 RESOLUTION:**

Should the Board concur with the Planning, Program Development and Budget Committee's recommendation, the following resolutions would be in order:

**RESOLVED**, that upon the recommendation of the Planning, Program Development and Budget Committee, the Board hereby sets—subject to SB 163 becoming statute and effective January 1, 2012—the annual membership fee for active members in 2012 at \$400 (\$410 minus the \$10 one-time rebate) and the annual membership fee for inactive members at \$115 (125 minus the \$10 one-time rebate); and it is

**FURTHER RESOLVED**, that the total Keller deduction for the 2012 annual membership fee be set at \$10, which shall include \$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 under the Temporary Emergency Legal Services Voluntary Assistance Option in Business and Professions Code section 6140.01, a \$20 deduction from the annual membership fee is to be provided to each member if the member 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 2012 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 2011 annual membership fees for all members, other than new admittees, billed on or after December 19, 2010 be set at \$100 for active members and \$30 for inactive members; and it is

**FURTHER RESOLVED**, that said penalties in the preceding paragraphs shall be assessed on February 2, 2012; 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 2012 be set as follows: fees of \$400 (\$410 minus the \$10 one-time rebate) for those admitted between January 1 and May 31, 2012 and \$200 for those admitted between June 1 and November 30, 2012; and it is

**FURTHER RESOLVED**, that late payment penalties for new members admitted in 2012 be assessed and set on the 46th day from the invoice date as follows: \$100 for those admitted between January 1 and May 31, 2012, and \$50 for those admitted between June 1 and November 30, 2012; 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 2012; 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.