

# AGENDA ITEM

**NOV 142**

**DATE:** October 10, 2011

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

**FROM:** Hagop Bedoyan, Chair, Board of Legal Specialization  
Gayle Murphy, Senior Executive, Admissions  
Natalie Leonard, Director, Legal Specialization Department

**SUBJECT:** Proposed Adjustments to 2012 Legal Specialization Fees

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## EXECUTIVE SUMMARY

The Board of Governors approved an adjustment in Legal Specialization fees for 2011, which was the first time the fees had been increased since January 1993. The process for adjustment of the fees was expected to be a two-year phase process. The fee adjustment last year has greatly improved the fiscal outlook for the program, but an additional adjustment is needed to ensure the program's long term fiscal stability. The Board of Legal Specialization requests that adjustments to some of the fees charged in connection with the program in 2012, primarily the annual renewal and recertification fees, be considered and approved by the Board of Governors. If the Board approves the proposed 2012 Legal Specialization Schedule of Charges and Deadlines, the new fees would be effective January 1, 2012.

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## BACKGROUND

Pursuant California Rules of Court, rule 9.35(b), the State Bar of California is charged with administering a program for certifying legal specialists under rules adopted by the Board of Governors of the State Bar of California. California Rules of Court, rule 9.35(e) gives the State Bar the authority to set and collect appropriate fees and penalties for this program. The Legal Specialization program is a special fund and the program is required to be self-supporting. Revenue in the General Fund is not used to subsidize the Legal Specialization program.

In response to a recommendation from the Board of Legal Specialization (BLS), the Board of Governors approved an increase in the fees paid by certified legal specialists last year. This increase was expected to be the first out of two that would be needed to adequately pay for the program's expenses. Prior to that, the last adjustment in Legal Specialization fees was approved by the Board of Governors in January 1993. For many years the fees collected annually from certified specialists and from applicants

seeking certification adequately covered expenses and a stable carry-forward or “reserve” was available. During the past couple of years, however, expenses increased significantly, and there was not a corresponding increase in the revenue received – until this past year.

The adjustment in fees for 2011 has certainly helped the overall fiscal picture, but even with the increase, the expenses in 2011 will most likely exceed the revenue and funds from the reserve will have to be used, which was expected. The BLS believed that implementing a two-year fee adjustment schedule would be more acceptable to the certified specialists, which is why a higher fee was not sought last year. It is anticipated that approximately \$250,000 of the reserve will be used by the end of 2011. One of the reasons that even more of the reserve will not be used this year is that several austerity measures were taken, such as fewer Commission meetings and staff positions not filled, in the latter half of 2010 and all of 2011, which has kept expenses to a minimum. In addition, the program has delayed needed investments in technology and research into the creation of new certified specialties, which is a program mandate. The program cannot, however, continue under the same fiscal constraint structure and still ensure the same level of quality is maintained.

Costs increased over the years for several reasons, but primarily due to increases in the Interfund charges, expenses related to production and administration of the examinations and to how staff was allocated to the program. Additionally, revenues have not met budgetary goals, as fewer attorneys have been certified as specialists than anticipated and others have declined to continue their participation in the program because of retirement or their own financial difficulties.

The expenses for the Legal Specialization program also increased the last several years as a result of the three new specialties that were added four years ago. The new specialization areas resulted in greater travel expenses that have not been offset, yet, by a significant number of new specialists who, after completing all requirements for certification, would be contributing to the Fund through payment of the annual fee, since the application process can be lengthy. In addition, other legal specialization related expenses that were shared with other cost centers because of the management structure in place at the time, are now being charged solely to the Legal Specialization department. For instance, in the past, only a percentage of the expenses related to the department’s Director and her Senior Administrative Assistant were charged to the Legal Specialization program because the Director was also supervising other programs. Now, the Director’s sole responsibility is to manage the Legal Specialization department, which is as it should be.

The cost to develop and administer the examination, which is given every other year, continues to rise due to increased facility costs, proctor costs and costs for laptop technology that test-takers require. The program also continues to invest in several new specialty areas in fulfillment of its mission to increase public protection across a broad range of practice areas to the extent possible. Finally, the program needs to

update its technology in order to meet the expectations of today's new lawyers, and provide maximum value to the State Bar's certified specialists.

For all these reasons, the expenses are greater now and anticipated in the future than they have been in the past and the appropriate amount of revenue must be collected to cover the costs associated with the program.

Revenue for the last several years has been:

2006	\$ 998,397
2007	\$1,204,460
2008	\$ 996,619
2009	\$1,188,948
2010	\$1,002,460
2011	\$1,629,864 (Budgeted)

The expenses and revenues fluctuate from year to year because of the administration of the Legal Specialization examinations, which results in increases both revenues and expenses.

Expenses during the same period have climbed for reasons discussed earlier:

2006	\$1,010,120
2007	\$1,157,746
2008	\$1,034,368
2009	\$1,188,254
2010	\$1,249,472
2011	\$1,871,711 (Budgeted)

Over the years, a fairly large reserve accumulated in the Legal Specialization Fund, even though there were years when expenses outpaced revenues, which was primarily connected to the timing of the Legal Specialization examinations (every other year) and when the application fees from were received. When the 2011 budget was approved last year, it was clear that the program would spend approximately \$250,000 of the reserve, which would still result in a positive carry-forward of approximately \$1,268,196. The prior and projected carry-forwards have been:

2007	\$1,875,859
2008	\$1,838,109
2009	\$1,830,000
2010	\$1,518,196
2011	\$1,268,196 (Budgeted)

Historically, it has been believed that an adequate reserve should be maintained in the Legal Specialization Fund to ensure that there are adequate funds: 1) to be able to carry the program through the years when revenue was less than expenses due to the

timing of the examinations or fewer specialists renewing their certification than anticipated; 2) in the event of an incident that might require an unplanned expenditure of funds, such as a security breach or catastrophic event like an earthquake or flood that would substantively affect an administration of an examination; and 3) to fund the start-up costs associated with new areas of specialization.

Absent an adjustment in fees 2012, it appears the reserve will continue to be used to offset the program's expenses and could soon be depleted. The Legal Specialization program is a special fund program, and must fund itself.

In addition to the proposed adjustments to the annual renewal and re-certification fees, which are contained in Enclosure B, there is a proposed new administrative fee for replacement certification certificates, which would cover the cost of production and handling of the requests. It should also be noted that the language related to the timing of the examination late fees has been changed in the Schedule of Charges and Deadlines on Enclosure B, as it is anticipated that the legal specialization program rules will be revised because it is no longer feasible for several reasons to permit such late filing for an examination. Currently, applicants can register on the day of the examination, which creates several administrative difficulties.

## **ISSUE**

Whether the current fees charged in connection with the Legal Specialization program should be adjusted.

## **CONCLUSION**

The Board of Legal Specialization has considered these issues during recent meetings, and it believes that the best approach to ensuring a balanced budget and the continued fiscal stability of the Legal Specialization fund is through another adjustment to the fees that are charged, which it is recommending to the Board of Governors. Attached as Enclosure A is the current Schedule of Charges and Deadlines for the Legal Specialization program and Enclosure B is the recommended Schedule of Charges and Deadlines for the Legal Specialization program beginning January 1, 2012.

## **FISCAL / PERSONNEL IMPACT:**

If the proposed fee adjustments are approved, the revenue budget for 2012 would increase by approximately \$280,000.

## **RULE AMENDMENTS:**

Amendments to Appendix A, Schedule of Charges and Deadlines, of the Rules of the State Bar of California.

**BOARD BOOK IMPACT:**

None

**RECOMMENDATION**

Attached as Enclosure B is a listing of the fees proposed for the Legal Specialization program, which will modify the charges currently listed in Appendix A of the Schedule of Charges and Deadlines of the Rules of the State Bar of California.

**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 of Governors approve the adjustments in Legal Specialization fees, in the form attached hereto, effective January 1, 2012.

**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 approves the adjustments in Legal Specialization fees, in the form attached hereto, effective January 1, 2012.