

AGENDA ITEM

143JULY 2014

DATE: July 2, 2014

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

FROM: Larry Sheingold, Chair, Committee of Bar Examiners
Gayle Murphy, Senior Director, Admissions

SUBJECT: Proposed Adjustments in Admissions Fund Fees

EXECUTIVE SUMMARY

During its January 2014 meeting, the Board of Trustees (Board) approved in principle a 5% increase in Admissions fees, which was included as part of the 2014 – 2016 budget item that was considered by the Board, subject to a specific proposal from the Committee of Bar Examiners (Committee).

The Committee considered this matter during its April 2014 meeting and believes that adjustments in the fees are necessary in order to provide a balanced budget in 2015 and 2016. As a result, the Committee is seeking the Board's approval of increases in not only the examination and moral character determination application fees, but other fees related to functions performed by the Office of Admissions and within the Office of Admissions' budget. The adjusted fees are discussed below and would become effective January 1, 2015 and January 1, 2016.

The Board may wish to also consider alternatives to some of the proposed fee adjustments by identifying alternative sources of revenue in the General Fund that could be used to subsidize certain activities, such as the law school regulation program.

Board members with questions regarding this item may contact Gayle Murphy at (415)538-2322; gayle.murphy@calbar.ca.gov.

BACKGROUND

The activities of the Committee of Bar Examiners (Committee), which are administered by the State Bar of California's Office of Admissions, are funded entirely by applicant fees, fees for study aids, law school annual reports, visitation and other law school fees and interest income, which are consolidated in the Admissions Fund, a State Bar of California restricted fund. In addition, included in the Admissions Fund are the fees

charged under the law school registration and accreditation programs, the Multi-Jurisdictional Practice program, the Practical Training of Law Students program, the Out of State Attorney Arbitration Counsel program, Pro Hac Vice and the Minimum Continuing Legal Education Provider certification program. The Admissions Fund receives no support from the General Fund or from member dues.

To give the Board a sense of history of fee adjustments in the past, in 1999 the Board approved a budget plan for the Admissions Fund that included five annual adjustments of fees intended to finance the cost of Admissions operations for any particular year by the group of applicants who go through the admissions procedure in that year and to establish a minimum carry-forward of approximately \$1,000,000. In addition, the Board instructed the Committee to prepare annual budgets that would maintain the established carry-forward and that would cover the costs for any particular budget year based on the costs of the preceding year. The underlying concept was that it was fairer to applicants as a whole to have annual relatively small adjustments rather than more substantial adjustments every three to four years.

Through 2007, the reserve or prior year's carry-forward did not have to be used to cover expenses. Beginning in 2008, however, approximately \$851,831 was used from the reserve. The prior year's carry-forwards at that time were:

2005	\$1,869,937
2006	\$3,671,734
2007	\$3,852,695
2008	\$3,000,864
2009	\$1,730,015

In the past, it was believed a reserve in the Admissions Fund should always be available in the event there is 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.

During this same time period, as shown in the following chart, the cost of administering the Admissions' programs grew significantly. While salary cost was one of the contributing factors associated with the increase in expense, the cost of renting examination-related facilities, compensating the proctors and independent contractors, the Interfund [now referred to as Indirect Costs] and outside contracts, such as purchase of the Multistate Bar Examination (MBE), also increased:

2005	\$13,824,150
2006	\$15,056,230
2007	\$16,804,025
2008	\$17,766,914
2009	\$17,494,534
2010	\$17,588,368

In projecting future budgets, it appeared in 2009 that the reserve would be depleted as the cost of the Admissions' programs was expected to exceed anticipated revenues. At the time, the Admissions Fund had a projected negative year-end balance of approximately \$260,000 in 2010 and \$2,860,000 in 2011, which was expected to continue to build significantly thereafter, if fee adjustments (or substantive changes to the Admissions' programs) was not implemented.

Certain savings that could be made in the 2009 budget were identified by Office of Admissions' staff that resulted in an approximate reduction of \$600,000 in the 2009 budget, which had been previously approved by the Board. At the same time, revenue was less than anticipated at the time the 2009 budget was originally prepared, which required an adjustment to the operating revenue figure of \$640,000.

The revised 2009 budget indicated that fee adjustments would be required to avoid deficits in the future years. As a result, the Board approved the Committee's request that fee adjustments of 5 percent for each of the following three years: 2010, 2011 and 2012 be adopted. Because of the carry-forward that had been built up over those years, which was more than anticipated due to more applicants applying for admission than anticipated and cost efficiencies, no fee adjustments were needed in 2013 and 2014.

A review of the anticipated expenses and revenues in the future, however, indicate that fee adjustments are needed at this time. In its review of the State Bar's budget by the Board in January 2014, the Board approved a 5% increase in Admissions fees, effective January 2015 and 2016, subject to a specific proposal from the Committee. Not only have the costs of staffing increased, but other costs have risen as well.

In his memorandum to the Board in January 2014, State Bar CEO and Executive Director Joe Dunn said:

The costs of conducting the bar exam are rising – driven in part by the costs of special accommodations facilities – while the population taking the exam is expected to remain flat, or even decline. These trends will make an increase in Admissions fees necessary in the relatively near future.

The Admissions Fund is expected to begin 2014 with a balance of \$3.7 million [carry-forward]. The budget assumes a 5% increase in exam-related and moral character fees in 2015 and an equal increase in 2016. Even so, the Admissions Fund balance is projected to fall to just \$0.6 million at the end of 2016, so further fee increases or other action may be needed.

Finance and Admissions will monitor these trends closely and keep the Board of Trustees apprised of developments.

With the anticipated 5 percent adjustment as described in the Board's budget documents, the Admissions Fund would look as follows:

	2011	2012	2013	2014**	2015**	2016**
Revenue	\$18,698,951	\$19,528,288	\$20,047,679	\$19,509,824	\$20,439,775	\$21,369,726
Expense	\$19,728,618	\$20,570,084	\$19,099,195	\$20,667,679	\$21,457,890	\$22,390,883
Deficit				-\$1,157,855	-\$1,018,115	-\$ 1,021,157
Ending Fund Balance	\$ 3,851,000	\$ 2,759,135	\$ 3,707,619	\$ 2,642,145	\$ 1,624,030	\$ 602,873

** Proposed

ISSUE

Whether the Board should adopt adjustments to the fees in the Admissions Fund, effective January 1, 2015 and 2016 and whether other sources might be identified to subsidize some of the programs within the Admissions Fund.

CONCLUSION

The Board of Trustees should approve the adjustments in fees proposed by the Committee, and investigate possible other sources to subsidize programs within the Admissions Fund budget.

DISCUSSION

Provided below is general information regarding the status of the Admissions Fund over the last several years, including a summary of the revenue collected by various departments, which was taken from the final operating statement for each year and the final budget for 2014.

Expense

Because of the various ways that expenses were allocated in the past and changes that have been made in staffing assignments and cost centers, comparisons of expense by cost centers or functions in a chart would not provide useful information. The 2014 budgets for each department, which were based on past years' experience and anticipated increases, such as the Multistate Bar Examination cost that will increase from \$60.00 to \$64.00 per applicant effective July 2015, will be used as the basis to discuss whether the current fees charged are adequate to cover the cost of the programs.

According to the State Bar's budget and financial documents, the following represents the differences to total Admissions Fund expenses and revenues for the last several years:

Expense:

2011	2012	2013	2014*
\$19,728,618	\$20,570,085	\$19,099,940	\$20,667,679

*Budgeted

Revenue

Revenue is a little easier to break-out by source as the line items have remained consistent for the past several years. A summary follows:

Revenue	2011	2012	2013	2014*
General Admissions	\$17,704,479	\$18,715,091	\$19,184,911	\$18,732,022
Law School Regulation	\$ 135,649	\$ 149,838	\$ 139,414	\$ 133,000
MJP	\$ 277,752**	\$ 113,108	\$ 118,900	\$ 127,802
PTLS	\$ 125,530	\$ 129,355	\$ 143,785	\$ 120,000
MCLE Provider	\$ 260,010	\$ 238,200	\$ 275,130	\$ 217,000
OSAAC	\$ 38,800	\$ 36,210	\$ 35,960	\$ 32,000
Pro Hac	\$ 133,865	\$ 125,875	\$ 125,085	\$ 125,000
FLC	\$ 19,065	\$ 20,610	\$ 23,465	\$ 23,000
Total	\$18,695,150	\$19,528,287	\$20,046,650	\$19,509,824

* Budgeted

** MJP Annual Fee in subsequent years was allocated to General Fund

As reported in the budget documents submitted to the Board, the Indirect Costs charges during the same time period have been:

2011	\$3,626,306
2012	\$3,655,478
2013	\$3,778,177
2014*	\$4,236,953

* Budgeted

In addition, in 2012, \$1,000,000 was transferred from the Admissions Fund to the technology fund and \$1,500,000 was transferred from the Admissions Fund to the Los Angeles facility fund.

GENERAL ADMISSIONS

Since 2009, the costs associated with administering the functions assigned to the Office of Admissions have grown and will continue to grow. Until just this past year, which is when salary increases were authorized by the Board for the first time in several years, those increases were not related to salaries, which is generally a large component of the expense budget. The costs associated with the renting facilities, hiring proctors, graders, purchasing the Multistate Bar Examination, etc., have all increased. With the fee adjustments that were authorized in 2009, a comfortable carry-forward was accumulated during the past several years, which assisted in covering the cost of rising

expenses. In 2009, the Committee went through a rigorous process of slicing off as many of the “extras” that could be without sacrificing the quality of the programs that it must administer. Taking additional steps to save money, such as eliminating some of the catering for Committee meetings, might be helpful, but it will not generate enough savings to cover the looming differences between revenue and expenses. Even if the Committee returned to an implementation plan for a two-day examination, not enough savings would be realized. The estimated savings for the two-day examination was approximately \$1,000,000, which doesn’t include the costs associated with gearing up for it, such as computer re-programing and examination question editing that would be required to conform the systems and questions to what would be needed.

Adjusting fees in the past has always been a difficult subject to consider, as it is the law students seeking admission to practice law, most of whom have already accumulated significant law school debt, who must bear the primary burden. Not to mention the fees most applicants pay for bar review courses, which are understood to now cost in the neighborhood of \$5,000. But if not them, who should pay? This may be a discussion the Board may wish to have, although additional sources of funds in the General Fund do not appear to be readily available.

In the absence of any source of funding that would make other alternatives plausible, it is recommended that the primary Admissions fees be increased by 5% in 2015 and again in 2016, effective with administration of the examinations that are administered in those years, which means that the adjusted fees would start being collected in 2014 when the February bar examination materials are made available.

The only variation to that would be the suggestion that the Law Office Study program fees be increased significantly, as it is not bringing in the revenue to cover the cost of administering the program. Last year, approximately \$5,000 was collected from students, while the costs associated with processing the applications, examinations, and reports exceeds \$24,000, which does not include management and indirect costs. It is recommended that the Notice of Intent to Study be increased from \$40 to \$150 and that the fee for the semi-annual reports be increased from \$30 to \$100. In addition, it is recommended that the fee for copying be increased from \$.50/page to \$1.00/page after the first page cost of \$5.00, as the cost of producing such copies has also increased.

LAW SCHOOL REGULATION

For the last several years, the revenue received for the law school regulation function, which includes accredited and registered law schools, has been:

2011 Actual:	\$135,649
2012 Actual:	\$149,838
2013 Actual:	\$139,414
2014 Budgeted:	\$133,000

In 2009, 9 law schools were inspected, in 2010, 13 law schools were inspected, 10 law schools were inspected in 2011, 14 law schools were inspected in 2012, 11 law schools

in 2013 and 18 are scheduled to be inspected in 2014. The majority of inspections were led by the Director for Educational Standards and a few were conducted by the Committee's educational standards consultants.

In 2013, the expense for the law school regulation cost center was \$288,039 and in 2014, \$317,431 is budgeted to be spent. Included in these expenses are the cost of two FTEs, the consultants, travel expenses and other miscellaneous costs. This does not include any of the Senior Director's time or the indirect costs, which should be, presumably, shared by all the cost centers. It should be noted, that the Director for Educational Standards also supervises the MCLE Provider certification department, which takes up approximately 15% of his time and provides other educational standards related advice not necessarily connected with the law schools for about 10% of his time.

Using an average of \$140,000 of income compared to the 2014 budgeted shows that the revenues collected barely cover half of the cost of the program. This would suggest that the fees charged for law school regulation services need to be increased. As it is now, and always has been, the fees collected for other functions in the Admissions department are subsidizing the program. Alternatively, perhaps there are other resources in the State Bar that could be used to offset a significant increase in the fees charged to the schools, which also may be a discussion the Board may wish to have.

At a minimum it is proposed that the law school fees be adjusted by 10% in 2015, and that the fees be further adjusted by 5% in 2016. Using the average income as a guide, it is anticipated that approximately \$14,000 in 2015 would be generated by the increase. While not sufficient to ensure the program is self-funded, the fees would not price the law schools out of existence.

MULTI-JURISDICTIONAL PRACTICE PROGRAM

During 2013, \$127,800 was collected from out-of-state attorneys seeking to register in the Multi-Jurisdictional Practice (MJP) program (this does not include the moral character determination application fee that is accounted for separately). Beginning in 2012, the annual fee paid by MJP attorneys has been allocated to the General Fund. In 2013, there were six legal services lawyers and 1,048 in-house counsel who are registered. Two hundred and seventeen (217) MJP applications were processed in 2013. A review of the staffing costs associated with processing the applications for the programs show that approximately \$112,426 is spent. This figure does not include any of the management or indirect costs, which, if added, would result in an amount that indicates the program is not funding itself. The fee for the program has not been increased for some time and it appears that adjusting it at this time would be appropriate. A 10% adjustment in the application fee is reasonable and, thus, is recommended, which would increase the fee from \$550 to \$605 in 2015, resulting in approximately \$12,780 more in revenue in 2015 if the same number of applicants apply, and that the fee be adjusted by 5% in 2016.

FOREIGN LEGAL CONSULTANT PROGRAM

During 2013, \$23,465 was collected from foreign attorneys seeking to register and to continue their registration in the Foreign Legal Consultant program (this does not include the moral character determination application fee that is accounted for separately). By the end of 2013, there were 53 foreign attorneys who are registered in the program. Sixteen applications were processed in 2013 and 11 applicants met the requirements. The staffing costs associated with processing the applications for the programs shows that approximately \$10,500 is spent on this program, which is relatively very small compared to the other admission programs. This figure does not include any of the management or indirect costs, which, even if added, would result in an amount that indicates the program is self-funding. Thus, it is recommended that the FLC fees not be changed.

SPECIAL ADMISSIONS: PRACTICAL TRAINING OF LAW STUDENTS PROGRAM, PRO HAC VICE PROGRAM AND OSAAC PROGRAM

By the end of 2013, \$143,785 in revenue had been collected to fund the Practical Training of Law Students' (PTLS) program, \$125,085 for the Pro Hac Vice program and \$35,960 for the Out-of-State Attorney Arbitration Counsel (OSAAC) program. In 2013, 3,171 law students submitted applications seeking registration in the PTLS program, which permits them to provide limited legal services under the supervision of a California attorney. Also in 2013, 2,330 out-of-state attorneys filed Pro Hac Vice applications and 713 out-of-state attorneys filed OSAAC application. In 2013, the costs associated with the direct staffing of these programs (the staff in Special Admissions splits their time between the PTLS (approximately 50%) and the Pro Hac Vice and OSAAC programs (together, the other 50%) was \$168,788. This figures does not include any of the management or indirect costs, which, if added, would result in an amount that indicates the programs are self-funding and that fee adjustments are not necessary at this time. The Committee believes, however, that it would be appropriate to reduce the fee for changing a supervisor from \$55.00 to \$25.00, as the amount of time it takes to do so is less than the amount of time it takes to process the initial application. The law students (and their law schools) complain about paying this fee and since the other special admission programs are helping to defray the cost of this activity, it would seem appropriate to provide this kind of relief.

MCLE Providers

Consideration of the appropriate fee that providers should be charged for submitting Minimum Continuing Legal Education provider status applications will be considered by the Board of Trustees during a future meeting after it is determined whether additional resources are needed to fund the audit program.

FISCAL / PERSONNEL IMPACT:

There is no anticipated personnel impact associated with these recommendations. If the Board does not approve the recommended adjustments, however, there could be significant impact to the Committee's ability to conduct its business.

In the budget agenda item considered by the Board in January 2014, the revenue forecast with a 5% increase in fees was as follows:

2014: 19,509,824

2015: 20,439,775

2016: 21,369,726

The ending balance at the end of 2016 was projected to be \$602,873.

To address anticipated negative variances in the future, the Committee proposes adjustments in admissions fees of 5% for 2015 and 2016, subject to the approval of the Board, as indicated below:

Fee Category	Current Fee	Proposed 2015	Proposed 2016
Bar Examination Application: General Applicant	\$614	\$645	\$677
Bar Examination Application: Attorney Applicant	\$892	\$937	\$983
First-Year Law Students' Examination Application	\$566	\$594	\$624
Laptop Fee	\$139	\$146	\$153
Registration: General Applicant	\$108	\$113	\$119
Registration: Attorney Applicant	\$194	\$204	\$214
Moral Character Determination Application	\$500	\$525	\$551
Moral Character Extension Application	\$240	\$252	\$265
Admission Certificate	\$81	\$85	\$90
Intention to Study Law in Law Office	\$40	\$150	\$158
Law Office Study Initial Study and Semi-Annual Report	\$30	\$100	\$105
Copies of Documents	\$5 first page; \$.50 each additional page	\$5 first page; \$1.00 each additional page	\$5 first page; \$1.00 each additional page

And further, it is recommended that the following law school fees also be adjusted:

[The last time the Accredited Law School fees were adjusted was in 2009. Many of the fees are based on time and expenses.] Proposed adjustments to the Accredited Law School Fees (rounded to the nearest \$5.00) are:

Fee Category	Current Fee	Proposed 2015	Proposed 2016
Public Record copying fee	\$.50	\$5.00 first page; \$1.00 each additional page	\$5.00 first page; \$1.00 each additional page
Fees for services	\$200	\$220	\$230
Annual Compliance Report Fee	\$1,500	\$1,650	\$1,735
Late Filing of Annual Compliance Report fee	\$300	\$330	\$350

[The unaccredited law school fees that were originally set in 2008, which is when primary oversight of the unaccredited law schools by the Committee was assumed, have not changed since then.] The proposed adjustment to the Unaccredited Law School Fees (rounded to the nearest \$5.00) are as follows:

Fee Category	Current Fee	Proposed 2015	Proposed 2016
Public Record processing, per page	\$0.50	\$5.00 first page; \$1.00 each additional page	\$5.00 first page; \$1.00 each additional page
Services of Senior Director or consultant [Fees for Services]	\$200/hr actual cost \$200/hr	\$220/hr	\$230
Application for Registration	\$2,000	\$2,200	\$2,310
Inspection for Application for Registration	\$5,000	\$5,500	\$5,775
Annual Compliance Report			
Category A law school fee	\$500	\$550	\$580
Category B law school fee	\$750	\$825	\$870
Category C law school fee	\$1,000	\$1,100	\$1,155
Late Filing of Annual Compliance Report	\$200	\$330*	\$350*
Self-Study (if separate from inspection)	\$200/hr	\$220/hr	\$230/hr
Inspection Category A law school fee	\$5,000	\$5,500	\$5,775

Inspection Category B law school fee	\$6,500	\$7,150	\$7,510
Inspection Category C law school fee	\$8,000	\$8,800	\$9,240
Request for approval of Major Change	\$200/hr	\$220	\$230
Response to Notice of Noncompliance	\$800	\$880	\$924

Proposed adjustments to MJP Application Fees:

Fee Category	Existing Fee	Proposed 2015	Proposed 2016
Application for Registered In-House Counsel	\$550	\$605	\$635
Application for Registered Legal Services Attorney	\$550	\$605	\$635

Proposed adjustment to PTLS Fee:

Fee Category	Existing Fee	Proposed 2015	Proposed 2016
Request to change supervising attorney	\$55	\$25	\$25

RULE AMENDMENTS:

None

BOARD BOOK IMPACT:

None

RECOMMENDATION

The Committee of Bar Examiners recommends that the Planning, Program Development and Budget Committee recommend to the Board of Trustees that the proposed adjustments in the admissions fees submitted by the Committee of Bar Examiners be approved, effective January 1, 2015 (which would include the fees for the February 2015 California Bar Examination that begin to be collected in 2014) and January 1, 2016 (which would include the fees for the February 2015 California Bar Examination that begin to be collected in 2015).

PROPOSED BOARD COMMITTEE RESOLUTION:

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

RESOLVED, that the Planning, Program Development and Budget Committee recommends that the Board approve the proposed adjustments in Admissions Fees in the form attached hereto, effective January 1, 2015 (which would include the fees for the February 2015 California Bar Examination that begin to be collected in 2014) and January 1, 2016 (which would include the fees for the February 2015 California Bar Examination that begin to be collected in 2015).

PROPOSED BOARD OF TRUSTEES RESOLUTION:

Should the Board concur with the Planning, Program Development and Budget Committee's recommendations, 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 proposed adjustments in Admissions Fees in the form attached hereto, effective January 1, 2015 (which would include the fees for the February 2015 California Bar Examination that begin to be collected in 2014) and January 1, 2016 (which would include the fees for the February 2015 California Bar Examination that begin to be collected in 2015).