

## **TAB 4.1**

### **FISCAL**

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## **Article 1**

### **FISCAL**

#### **Section 1   *Adoption and Amendment of Budget***

- (a) The Board of Trustees shall adopt, by resolution, an annual expenditure budget for each budgetary fund of the State Bar. The State Bar's expenditures are formally governed at the cost center level through the annual budget resolution adopted by the Board. The budget allocates spending authority within each fund across the departments of the State Bar. The Office of Finance shall ensure that the annual budget that it presents to the Board for adoption (a) is at the cost-center level, in compliance with the requirements of Business and Professions Code section 6140.1; (b) includes a proposed budget for the current and the following two calendar fiscal years; and (c) reports variances by cost center between actual revenues and expenditures for the previous fiscal year and budgeted figures. Based on availability of data, the cost center budgets of the following two fiscal years may contain less detail for some of the line item expense categories. Cost center refers to the departments of the State Bar and those units or other subdivisions within a department, whose managers are responsible for all its associated direct and indirect costs and for which budget authority is conferred by an adopted budget. For purposes of the budget, cost center units may include a combination of subunit data provided that a meaningful level of detail is provided to the Board.
- (1) The Office of Finance shall monitor expenditures and report to the Executive Director/CEO on expenditures incurred which are likely to cause the total expenditures of any fund to exceed its adopted budget. Departmental operations are expected to be managed within budgets and, when projected variances arise, these are brought to the immediate attention of the Executive Director/CEO and the Office of Finance. Each manager who has budget monitoring duties is responsible for ensuring that receipts and spending are within the approved budgetary authority and for the prudent use and safeguarding of State Bar funds. Corrective action is necessarily taken on a case-by-case basis, depending on the extent to which projected departmental variances impact overall expenditure authority at the department level.
- (2) The Office of Finance shall adopt, maintain, and adhere to written Budget Monitoring Policies and Procedures, not inconsistent with the policies of the Board and to be included in the independent control review provided in Section 8. The Budget Monitoring Policies and Procedures shall include monthly reports to departments and Senior Executives and Managers that include benchmarks to allow the identification of significant variances and potential impact upon cumulative year-end outcomes.

- (3) Variances are important in determining potential budget shortfalls and the need for corrective actions, including but not limited to, any intradepartmental transfer. Significant year-to-date variances need to be explained to the Office of Finance as soon as possible after the month end close. The definition of “significant” varies depending on the departmental budget size and nearness to year-end; generally, all deficits or any variances that may result in the over expenditure of a departmental budget as a whole for a calendar fiscal year shall be investigated, explained, and reported to the Board Audit Committee.
- (b) The Board of Trustees may, by resolution, amend any adopted budget, upon the recommendation of the Planning and Budget Committee.
  - (1) In the event of a new program, an increase in service demands, or unforeseen and unanticipated expenditures in a department, those expenditures should be absorbed within the approved budget of the department. The Office of Finance may approve a request for intradepartmental transfer within the fund of a department, provided that the transfer will not result in the over expenditure of a departmental budget as a whole.
  - (2) Any request for an interdepartmental cost-center transfer must be presented to the Board for approval, as an amendment to the adopted budget before the cost-center to benefit from the transfer incurs an expense in excess of its previously budgeted expenditure authority, except in the case of an emergency approved by the Chief Executive Officer after consultation with the President, Vice President, and Treasurer.
- (c)
  - (1) Budgets lapse at the end of each fiscal year, except as provided below for project budgets. When the Board of Trustees adopts a multi-year budget, it shall adopt distinct budgets for each fiscal year within the budget period for each budgetary cost center.
  - (2) The Board of Trustees may adopt non-lapsing budgets for multi-year projects. Non-lapsing project budgets shall be identified as such in the adopting resolution.
- (d) The budgetary funds of the State Bar shall correspond to the accounting funds of the State Bar, as identified in Section 3, below, or to a combination of such funds. The relationship between budgetary funds and accounting funds shall be identified in the annual budget resolution.

**(Source: Board of Governors' Resolution, July 1981, December 1993, March 1997, June 2000, September 2004, December 21, 2011; Board of Trustees Resolution, March 13, 2015.)**

## **Section 2    *Semi-Annual Forecast***

The Office of Finance shall prepare a semi-annual forecast of receipts and expenditures of the operation of the Bar by funds and by responsible department managers, comparing forecast with budget. The report shall be a joint effort of department managers and the Office of Finance. An explanation of budgeted line item variance greater than one hundred thousand dollars (\$100,000) of the budgeted line item shall be included in the report. The report shall show all intradepartmental cost-center budget transfers and include an explanation of those transfers greater than one hundred thousand dollars. The semi-annual forecast report shall be reported to the Board of Trustees at the last Board Meeting before the State Bar Annual Meeting.

(Source: Board of Governors' Resolution, July 1981, March 1997, June 2000, September 2004; Board of Trustees Resolution, March 13, 2015.)

## **Section 3    *Reserve Policy***

### **A. DEFINITION AND CLASSIFICATION OF RESERVES**

1. **Working Capital.** In accordance with best practices, State Bar reserves are defined as working capital (current assets less current liabilities). Since the State Bar uses Enterprise Fund accounting for its financial operations in accordance with Generally Accepted Accounting Principles (GAAP), working capital is the financial measure that most closely matches the concept of "fund balance" in the Governmental Funds and what is typically meant by the concept of "reserves" in a budgetary policy context. This is also the financial measure recommended by the Government Finance Officers' Association of the United States and Canada (GFOA) as a "best practice" in setting reserve policies for Enterprise Funds (web site link): <http://www.gfoa.org/determining-appropriate-levels-working-capital-enterprise-funds>
2. **Classification of Reserves.** The Governmental Accounting Standards Board (GASB) is responsible for establishing "GAAP" for state and local governments in the United States. For Governmental Funds, GASB Statement No. 54 adopted in 2009 requires that Fund Balance be classified into five components: non-spendable, restricted, committed, assigned and unassigned. While these classifications are only used for Governmental Funds and are not applicable to Enterprise Funds (in fact, there is no discussion under GAAP of the concept of "fund balance" or reserves for Enterprise Funds), they nonetheless provide a useful framework for assessing the State Bar's reserves. Accordingly, reserves will be classified within each fund (where applicable) as follows:
  - a. **Non-Spendable.** Amounts that are not in spendable form, such prepaid items or inventories. (The State Bar does not currently have any reserves that would be classified as non-spendable.)

- b. **Restricted.** Revenues where the use is subject to externally enforceable restrictions imposed by outside third parties.
- c. **Committed.** These are outstanding obligations for contractual or policy commitment for programs or projects approved in prior fiscal years that are carried forward into the new year. They are typically composed of two types:
  - Encumbrances: unfilled purchase orders and outstanding contractual obligations at year-end. Since these commitments were made during the fiscal year, adequate resources should be available at year-end to cover them and carryover balances into the new fiscal year.
  - Policy Commitments: Balances formally set aside by the Board in order to fund future projects based on adopted plans.
- d. **Assigned.** Minimum reserve targets established based on assessing risks in accordance with the structured assessment methodology developed by the GFOA (see Section C), after addressing non-spendable, restricted and committed reserves.
- e. **Unassigned.** Residual classification of spendable amounts available for other purposes. Under GASB Statement No. 54, unassigned fund balance should not be shown as a negative number. However, as noted above, GASB Statement No. 54 is only being used as a policy framework in assessing the State Bar's reserves. Accordingly, in the interest policy clarity, where the State Bar's ending reserves are not sufficient to meet its non-spendable, restricted, committed and assigned amounts, the unassigned balance will be shown as a negative number in clearly disclosing how short reserves are in meeting policy goals.

## **B. ESTABLISHMENT AND CLASSIFICATION OF FUNDS**

While usually created with the goal of improving accountability, the proliferation of funds often makes an agency's financial position and fiscal operations more confusing and less transparent. As such, in accordance with GAAP, the State Bar will limit the proliferation of funds and only establish separate funds where there are compelling policy reasons to do so. This approach will not only simplify accounting and financial reporting, but by focusing on meaningful resource restrictions and earmarking, it will improve accountability, transparency and understandability.

## Program Funds

State Bar funds are organized into three Program Fund categories:

1. ***Restricted Funds.*** Using GAAP as the framework, "restricted" funds are those whose use is externally restricted via legislation, bond covenants or similar external restrictions. In short, to be classified as a "restricted" fund, the restriction must be externally imposed as set forth under GAAP. This means that all special purpose assessments approved by the State Legislature, including voluntary ones, will be accounted for in a separate restricted fund. In the case of limited-term assessments that will expire at some point, the fund will be closed-out when the last assessment is received or all proceeds are used for designated purposes, whichever occurs last. Closed-out fund balances will typically be transferred to the General Fund; however, the Board will determine the disposition of any residual balances on a case-by-case basis. The following are Restricted Funds:
  - a. Client Security Fund
  - b. Elimination of Bias and Bar Relations Fund
  - c. Equal Access Fund
  - d. Justice Gap Fund
  - e. Lawyer's Assistance Fund
  - f. Legislative Activities Fund
  - g. Legal Services Trust Fund
  - h. Legal Specialization Fund
  - i. Bank Settlement Fund<sup>1</sup>
2. ***Special Revenue Funds.*** While these could be accounted for within the General Fund, there may be compelling policy reasons to account for the use of resources separately. In this case, separate "Special Revenue Funds" will be created, recognizing that in accordance with GAAP, these could have been accounted for within the General Fund. Board approval should be required to establish a Special Revenue Fund, with findings as to the fund purpose and why earmarking these resources is appropriate. The following are Special Revenue Funds.
  - a. Admissions Fund
  - b. Annual Meeting Fund
  - c. Grants Fund
  - d. Sections Fund
3. ***General Fund.*** All other revenues, expenditures and other uses will be accounted for in the General Fund.

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<sup>1</sup> A new Fund to be established pursuant to the State Bar's receipt of \$44 million in bank settlement monies to be used to support legal services in the areas of economic development and foreclosure prevention.

### **C. MINIMUM RESERVE TARGET**

The State Bar will maintain unrestricted, uncommitted reserves in its General Fund, and each fund within its Restricted and Special Revenue Program Funds, other than Excluded Minimum Target Reserve Funds, net of reserves that are non-spendable, restricted and committed, that equate to 2 months of operating expenses for the respective funds; this translates to a target minimum reserve level of 17 percent.

Excluded Minimum Target Reserve Funds include all grant-related Funds, specifically the Grant, Legal Services Trust, Equal Access, Justice Gap, and Bank Settlement Funds.

### **D. APPROPRIATE RESERVE USES**

Circumstances where taking reserves below target minimum levels would be appropriate include responding to the risks that reserves are intended to mitigate, such as:

1. One-time uses in meeting cash flow needs; closing a projected short term revenue- expenditure gap; responding to unexpected expenditure requirements or revenue shortfalls; and making investments in human resources, technology, liability reductions, revenue base improvements, productivity improvements and other strategies that will strengthen State Bar revenues or reduce future costs.
2. Where a multi-year forecast shows an ongoing structural gap, in providing a strategic bridge to the future.

Any expenditure that would cause the balance of the General Fund, or any fund within the Restricted or Special Revenue Program Funds, to fall to a level totaling 10 percent or less of recurring annual operating expenses, must be approved by the Board of Trustees.

### **E. FUND BALANCE SPEND DOWN WHEN RESERVES ABOVE POLICY LEVELS**

Whenever reserve levels in the General Fund, or any fund within the Restricted or Special Revenue Program Funds, other than Excluded Excess Reserve Funds, surpass 30 percent, for a consecutive six month period, spend-down funding shall occur in accordance with the following principles:

1. Fund balance spend-down should be utilized to offset member dues and other assessments and use charges, where possible.
2. Fund balance spend-down should be used to advance strategic efficiency investments that will result in short- or long-term reductions in operating costs.

3. Fund balance spend-down should be used to bolster the Client Security Fund, where possible.
4. Fund balance spend-down should be used to increase legal services funding, where possible.

All spend-down in excess of \$250,000 must be approved by the Board of Trustees.

Excluded Excess Reserve Funds include all grant-related Funds, specifically the Grant, Legal Services Trust, Equal Access, Justice Gap, and Bank Settlement Funds, and the Sections Fund.

## **F. RESTORING RESERVES TO POLICY LEVELS**

Whenever reserve levels in the General Fund, or any fund within the Restricted or Special Revenue Program Funds, other than Excluded Minimum Target Reserve Funds, fall below the target minimum reserve level of 17 percent, the State Bar will strive to restore reserves to this level within five years. As revenues versus expenditures improve, the State Bar will allocate at least half to reserve restoration, with the balance available to fund outstanding liabilities, asset replacements, service levels restoration, new operating programs or capital improvement projects.

Excluded Minimum Target Reserve Funds include all grant-related Funds, specifically the Grant, Legal Services Trust, Equal Access, Justice Gap, and Bank Settlement Funds.

(Source: Board of Trustees Resolution March 11, 2016.)

### **Section 4                      Quarterly Financial Statements**

Quarterly financial statements shall be received by the Board at the next meeting following their availability. The financial statements shall be prepared following accounting principles generally accepted in the United States in conformance with pronouncements of the Governmental Accounting Standards Board ("GASB") and where not in conflict with GASB pronouncements, the Financial Accounting Standards Board ("FASB") pronouncements issued on or before November 30, 1989.



## Historical Note

As part of its planning and oversight function, and in response to concerns raised in the June 2015 State Audit, the Planning and Budget Committee initiated an assessment of the State Bar's existing fund structure, reserve policy and use of fund accounting in appropriately segregating earmarked resources. The proposed restructuring of the Bar's funds, based on that assessment and a subsequent detailed analysis conducted by staff and an independent consultant, was adopted by the board on October 11, 2015. The new structure divided the Bar's Program Funds into three categories - externally restricted funds, special revenue funds, and a consolidated general fund - in accordance with Generally Accepted Accounting Principles (GAAP). In addition, the Bar will maintain one Fiduciary Fund for the State Bar Access and Education Foundation.

## PROGRAM FUNDS

### Restricted Funds

- ***Client Security Fund.*** Maintains funds from which members' clients can be reimbursed for pecuniary losses resulting from dishonest conduct on the part of their attorneys. Such reimbursement is discretionary and, currently, is not to exceed \$100,000 per application for reimbursement on any one transaction, as prescribed by the Board of Trustees. This fund is replenished through annual assessments of \$40 per active member and \$10 per inactive member.
- ***Elimination of Bias and Bar Relations Fund.*** Supports activities with voluntary bar associations and programs that address concerns of access and bias in the legal profession. This fund is supported by a fee of \$5 and is part of the annual membership fees; however, members who do not wish to fund these activities have the option to not remit this fee.
- ***Equal Access Fund.*** Since 1999, the California Budget Act has included funds to provide free legal services in civil matters for indigent Californians. The funds are in the budget of the State Judicial Council for grants to be administered by the State Bar's Legal Services Trust Fund Commission through the Equal Access fund. The Judicial Council contracts with the State Bar for the administration of these funds, which currently consist of grants to approximately 100 nonprofit legal aid organizations, and reimburses the State Bar for its administrative expenses. In 2005, the Uniform Civil Fees and Standard Fee Schedule Act (AB 145) was approved by the Legislature and the Governor. The Act established a new distribution of \$4.80 per filing to the Equal Access Fund. These revenues were collected by the trial courts starting in January 2006 to fund grants to nonprofit legal aid organizations for the grant year.

## Historical Note

- **Information Technology Special Assessment Fund.** The Information Technology Special Assessment Fund is used to upgrade the State Bar's information technology systems, including purchasing and maintenance costs of both computer hardware and software. This fund was supported by a special assessment fee of \$10 from all active members, which sunsetted after December 31, 2013.
- **Justice Gap Fund.** Used to help close the justice gap for needy Californians by voluntary donations to legal aid, pursuant to AB 2301. Members may contribute more or less than the recommended donation or elect to make no donation.
- **Lawyer's Assistance Program Fund.** Established for the protection of the public, the courts and the legal profession by providing education, remedial and rehabilitative programs to those members of the State Bar who are in need of assistance as a result of disability related to substance abuse or mental illness. This fund is replenished through annual assessments of \$10 per active member and \$5 per inactive member.
- **Legislative Activities Fund.** Accounts for the consideration of measures that are deemed outside of the parameters established in Keller vs. the State Bar, the purview determination and any litigation in support or defense of that lobbying. In addition, can be used for Client Security Fund payments. Such activities are funded by members electing to support these activities. This fee of \$5 is part of the membership fees; however, members have the option to not remit this fee.
- **Legal Services Trust Fund.** Used to expand the availability and improve the quality of existing free legal services in civil matters to indigent persons and to initiate new programs that would provide such services. Under this program, interest earned on certain client trust accounts held by California attorneys is legally required to be forwarded to the State Bar and, after deduction of the State Bar's administrative costs, the remainder is to be distributed as grants. In addition, the Trust Fund is supplemented by an increase in the annual fee mandated by Section 6140.03 of the Business and Professions Code. In 2015, section 6140.3 allocated \$40 of the membership fee to the Trust Fund. Under the legislation, members may elect to reduce their fees by this amount if they choose not to support the activities authorized under this bill. The funding associated with the \$40 optional fee will be directed to the State Bar's Legal Services Trust Fund Program for distribution to nonprofit organizations that provide free civil legal services to low-income Californians.

- ***Legal Specialization Fund.*** Accounts for the certification of legal specialists in areas of family law; criminal law; taxation law; immigration and nationality law; workers' compensation law; personal and small business bankruptcy law; estate planning, trust and probate law; and appellate law. Resources are provided by application fees, certification fees, recertification fees and annual membership fees.

## **Special Revenue Funds**

- ***Admissions Fund.*** Accounts for fees and expenses related to administering the bar examination and other requirements for the admission to the practice of law in the State of California.
- ***Annual Meeting Fund.*** Accounts for Annual Meeting registration fees and expenses. The Annual Meeting Fund allocates its revenues and expenses among itself, the Conference of Delegates of California Bar Associations, which operates as an independent entity, and the Sections Fund.
- ***Grants Fund.*** Used to account for the various grants received and special projects undertaken by the State Bar.
- ***Sections Fund.*** Accounts for the activities of sixteen sections, which consist of specific practice areas or areas of professional interest and provides members with a vehicle for communicating with each other, educating themselves, and commenting on relevant legislation. Resources are provided through assessments of the sections' membership and revenue from seminars and workshops.

## **General Fund**

All other revenues, expenditures and other uses will be accounted for in the General Fund. These funds will be generally available for State Bar purposes, subject to budget priorities set by the Board. Consolidation of these funds will supersede previous Board policy regarding use of these funds. However, previous policy adopted by the Board, requiring adoption of the budget at the cost center level in addition to the fund level, and requiring reporting and approval of interdepartmental cost-center transfers, remains in place and unchanged.

## Historical Note

Pursuant to board adoption on October 11, 2015, existing funds were consolidated into the General Fund:

- General Fund
- Howard Building Fund
- Legal and Education Development Fund
- Los Angeles Facility Fund
- Public Protection Fund
- Support and Administration Fund
- Technology Improvement Fund
- Fixed Assets Fund
- Benefits Reserve Fund

## **FIDUCIARY FUND<sup>2</sup>**

~~**State Bar Access and Education Fund.** The Foundation is a nonprofit public benefit corporation that conducts activities that are charitable and educational on behalf of the State Bar. The Foundation is governed by a Board of Directors that consists of the Executive Director, Deputy Executive Director and Assistant Secretary. The State Bar provides administrative services to the Foundation in a third party, trustee capacity. These funds are not available for the State Bar's operations.~~

(Source: Government Accounting Standards, Board of Governors' Resolutions March 1977, March 1987, March 1997, June 2000, September 2004, December 2005, July 2007, January 2008, March 2009; Board of Trustees Resolutions October 11, 2015, March 11, 2016.)

## **Section 5    *Interfund Transfers and Loans Policy***

To achieve important financial management objectives, the State Bar has established various funds to account for resources the use of which should be restricted to certain activities as listed in Section 3. Accordingly, each fund exists as a separate financing entity from all other funds, with its own funding sources, expenditures and net financial position (assets less liabilities).

This policy covers two types of interfund transactions: transfers and loans.

1. **Transfers** move financial resources from one fund to another. While there is no change in the State Bar's overall financial position, interfund transfers result in reduced net assets in one fund and increased net assets in another.

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<sup>2</sup> PHASE I PROPOSED CHANGE: Recommend deletion to update based on dissolution of Access and Education Foundation.

2. **Interfund loans**, which are usually made for temporary cash flow reasons, do not result in a change in net assets for either the lending or the borrowing fund: each is net asset neutral. From a financial condition perspective, the lending fund has simply traded cash for an interfund receivable from the borrowing fund; and the borrowing fund has offset the cash it received from the lending fund with an interfund payable.

In summary, interfund transfers result in a change in net assets in the affected funds; interfund borrowings do not, as the intent is to repay in the loan in the near term.

### **Interfund Transfers**

Any transfers between funds must be clearly set forth in an adopted budget or budget amendment formally approved by the Board. Staff is then authorized to make transfers in an amount not to exceed the authorized limit. All interfund transfers must be supported by findings that demonstrate a clear nexus between the purpose of the transferring fund and the reason for the transfer of its funds to another. These findings may be set forth in the budget document, agenda reports, resolutions or other formal reports that are presented to the Board upon its review and approval of interfund transfers.

### **Interfund Loans**

From time to time, interfund borrowings may be appropriate; however, these should be limited and subject to the following criteria to ensure that the fiduciary purposes of the lending and borrowing funds are met:

1. The Chief Financial Officer is authorized to approve temporary interfund borrowings for cash flow purposes whenever the cash shortfall is expected to be resolved within 60 days. While there may be others, the most typical use of interfund borrowing under this circumstance is for grant programs, where costs are typically incurred before grant funds are received. However, in this case, the funds are typically received shortly after they are requested.
2. All other interfund borrowings for cash flow or other purposes require case-by-case approval by the Board. The reason for the interfund loan and repayment terms shall be clearly set forth in findings via the budget document, agenda reports, resolutions or other formal reports that are presented to the Board upon its approval of the interfund loan. After approval, staff is authorized to make the interfund loan in an amount not to exceed the authorized limit.

3. Any loans between funds not expected to be fully repaid within one fiscal year will not be recorded as interfund borrowings: they will be recorded as interfund transfers that affect net assets of the affected funds. However, underlying documentation is still required in such cases noting that the intent is for repayment of the transfer, including the repayment terms and conditions. The purpose of this "change in net assets" approach is to ensure fiscal transparency and accountability; and to guard against the perception that interfund loans are used to mask underlying fund deficits.

(Source: Board of Trustees Resolution July 2015.)

### **Section 6    *Fiscal Impact Analysis***

An analysis of fiscal impact shall be included in all board committee and Board of Trustees agenda items and staff proposals if the adoption of such items will create a fiscal impact. The analysis shall indicate if additional funds will be required, and if so, how such funding will be provided. The fiscal impact analysis shall be prepared jointly by the office responsible for the item and by the Office of Finance. Agenda items will not be processed unless a fiscal impact analysis has been included. For board items requiring additional funds, the Board Committee on Planning, Program Development and Budget must first review board agenda items with fiscal impact before the item may be presented to the board. The board committee shall report its findings, fiscal impact, and/or recommendations of the agenda item to the Board.

(Source: Board of Governors' Resolution, July 1981, August 1981, March 1997, June 2000, September 2004.)

### **Section 7    *Capital Assets***

In order to accommodate cash flow requirements, any request to purchase capital assets, even if already budgeted, must be reviewed by the Office of Finance prior to purchase.

"Capital Asset" is defined as fixed asset with life expectancy greater than a year, costing individually \$5,000 or more. Sales tax, freight and/or installation cost, if any, are to be included as a part of the total cost of the asset in determining whether it is a capital asset or not. Each capital asset is to be capitalized and depreciated over its assigned life. The depreciation method is the straight line method. No residual or salvage value is to remain for fully depreciated assets at the end of its assigned life. Assets purchased in a quarter are to be depreciated beginning in the following quarter.

The Office of Finance shall determine the assigned lives of asset categories in a manner consistent with Generally Accepted Accounting Principles and industry standards. The Office of Finance shall review the assigned lives of asset categories on an annual basis.

(Source: Board of Governors' Resolution, July 1981, March 1997, June 2000, September 2004, October 2005.)

### ***Section 8    Receipt of Cash***

All receipts shall be properly controlled and accounted for by recording the cash receipts on a daily basis and restrictively endorsing the checks as soon as they are received and retained in a secure place.

(Source: Board of Governors' Resolution, July 1981, August 1981, June 2000, September 2004.)

### ***Section 9    Bank Accounts***

The State Bar shall by an annual Board of Trustees resolution, identify Board members and designated staff who are authorized to sign withdrawal orders, sign transfer orders and checks, and transfer funds from one State Bar account to another. The resolution shall set the number of signatures required on such instruments based on dollar limits. The resolution shall specify a dollar limit for each signatory. The resolution shall also identify all financial institutions in which the State Bar maintains an account. Following the adoption of the resolution, the State Bar shall inform these financial institutions of those Board members and staff with signature authority and their corresponding limits.

(Source: Board of Governors' Resolutions, September 1982, December 1982, September 1983, June 2000, September 2004.)

### ***Section 10   Independent Review of Fiscal Controls***

Beginning in 2015 and every five years thereafter, a review of the State Bar's budget and fiscal control policies and procedures shall be conducted by an independent consultant under the oversight of the Board Audit Committee.

(Source: Board of Trustees Resolution, March 13, 2015.)

***TAB 4.2***

***TRAVEL AND BUSINESS EXPENSE POLICY***

**Article 1      Travel and Business Expense Policy**



**Article 1**  
**TRAVEL AND BUSINESS EXPENSE POLICY**

The Travel Expense Policy authorizes reimbursement for certain expenses, which may be incurred by persons traveling on State Bar business. Only when a traveler is considered to be on travel status is he or she eligible for reimbursement and/or travel advance as stated in the travel expense policy. The Business Expense Policy authorizes reimbursement for certain expenses, which may be incurred when a person is not on, travel status. Pursuant to the Executive Director's Financial Limitations policy, the Executive Director may modify the Travel Expense and Business Expense Policies and the authorized rates on behalf of the Board of Trustees.

**(Source: Board of Governors' Resolution, January 2001, September 2004.)**

## **TAB 4.3**

### **CONTRACTS**

#### **Article 1     **CONTRACTS****

- Section 1     Contractual Obligations of the State Bar*
- Section 2     Authority*
- Section 3     Fiscal Review*
- Section 4     Legal Review*
- Section 5     Execution*
- Section 6     Policy Restricting Former Members of the Board of Trustees  
and the Senior Managers Designated by the Executive  
Director from Doing Business with the State Bar*
- Section 7     Agreements with the State Bar Foundation Regarding  
Corporate Sponsors*

## **Article 1 CONTRACTS**

### **Section 1    *Contractual Obligations of the State Bar***

No contractual obligation of the State Bar shall

- (a) Create a debt or other liability of the state nor of any entity other than the State Bar (or any successor public corporation).<sup>1</sup>
- (b) Create any personal liability on the part of the members of the State Bar or the members of the Board of Trustees or any person executing the same, by reason of the issuance or execution thereof.
- (c) Be required to be approved or authorized under the provisions of any other law or regulation of this state.

**(Business & Professions Code § 6008.1)**

### **Section 2    *Authority***

Any project for consulting services, capital equipment, or technology purchases with anticipated expenditures exceeding \$75,000 must be specifically identified in the annual budget process and approved by the Board of Trustees.

Exempted are expenditures associated with the normal operations of the Bar including but not limited to site agreements, Admissions consultants, IOLTA and Equal Access grant distributions, and other routine services exceeding \$75,000.

Also exempted are cases of emergency where a purchase is necessary for the immediate preservation of the public health, welfare or safety, or protection of State Bar employees and property, provided the details justifying the emergency contract and other supporting documentation be reported to the Board at its next scheduled meeting.

For all contracts, projects, and expenditures reasonably expected to exceed 2,000,000, those amounts must be budgeted, or approved by a budget amendment. In addition, State Bar staff will develop and present a written cost-benefit analysis to the Board of Trustees before committing to, or making a binding agreement for the contract, project, or expenditure. The Board of Trustees, or the relevant Board committee, must then affirmatively approve the contract, project, or expenditure. All such cost-benefit analyses must discuss a recommended course of action and alternatives. This policy is intended to supplement rather than supplant the Request for Proposal (RFP) process conducted

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<sup>1</sup> PHASE I PROPOSED CHANGE: Language updated to be consistent with statute.

by staff. In cases of contracts, projects, or expenditures reasonably expected to exceed \$2,000,000 that necessarily involve an RFP, staff may determine whether the cost-benefit analysis is most usefully provided to the Board before or after the RFP issues.

(Source: Board of Governors' Resolution, July 1981, June 2000, March 2010, March 2, 2012; Board of Trustees Resolution July 2015.)

### ***Section 3    Fiscal Review***

Except in emergencies, no contracts exceeding five thousand dollars (\$5,000) shall be entered into by or on behalf of the State Bar unless the Office of Finance has verified that funds obligated by the contract may be entered into by or on behalf of the State Bar. As a part of budget verification, leases of office space, equipment leases, and building and equipment loan agreements are normally multi-year contracts and as such the Office of Finance shall coordinate with related offices to include these multi-year contract costs in future year budgets.

(Source: Board of Governors' Resolution, June 2000.)

### ***Section 4    Legal Review***

Contracts that utilize standard State Bar forms, such as purchase orders, without material modification or supplementation, need not be reviewed by General Counsel.

All contracts which do not utilize standard State Bar forms or which utilize such forms, but with material modification or supplementation, shall be reviewed by General Counsel; provided that General Counsel may decline to review any such contract which is for a sum less than twenty thousand dollars (\$20,000) and may designate from time to time additional categories of contracts not requiring legal review including, but not limited to, contracts for the lease of space in which to administer examinations or to hold meetings other than the Annual Meeting of the State Bar.

All contracts for services of an individual working on State Bar premises, if that individual is not an employee of another corporation or performs services for multi-employers shall require the approval of the Office of General Counsel and the Office of Human Resources.

(Source: Board of Governors' Resolution, June 2000.)

### ***Section 5    Execution***

All contracts shall be signed by the Executive Director or his or her written designee. Contracts submitted for signature shall be accompanied by indications that any required fiscal and legal reviews have occurred.

(Source: Board of Governors' Resolution, June 2000.)

**Section 6    *Policy Restricting Former Members of the Board of Trustees and the Senior Managers Designated by the Executive Director from Doing Business with the State Bar***

Members of the Board of Trustees and Senior Managers designated by the Executive Director, for a period of twelve months following expiration of their term of office or termination of employment, shall not:

- (a)    Seek to do, or do, business with the State Bar for monetary gain, or
- (b)    Act as agent or attorney for, or otherwise represent any person, for compensation by making any formal or informal appearance, or any oral or written communication before the State Bar, or any officer or employee or agent thereof, if the appearance or communication is for the purpose of influencing official State Bar action, including the awarding or revocation of services, contracts, or the sale or purchase of goods or property.

The board, or its designee, may waive the requirements of this policy for good cause.

(Source: Board of Governors' Resolution, July 1997, May 1998.)

**Section 7    *Agreements with the State Bar Foundation Regarding Corporate Sponsors***

The board authorizes the Executive Director, or his or her designee, to enter into an agreement with the Foundation of the State Bar regarding corporate sponsor arrangements, in a form approved by General Counsel.

(Source: Board of Governors' Resolution, July 1997.)

## **TAB 4.4**

### **INVESTMENT POLICY**

#### **Article 1 INVESTMENT POLICY**

- Section 1 Policy Statement*
- Section 2 Objectives*
- Section 3 Investment Instruments Authorized by the State of California*
- Section 4 Surplus Funds*
- Section 5 Reports of Investment Activities*
- Section 6 Ethics and Conflicts of Interest*
- Section 7 Required Review of State Bar Investment Policy*
- Section 8 Investment Advisory Subcommittee*

## **Article 1**

### **INVESTMENT POLICY**

#### **Section 1    Policy Statement**

It is the policy of the State Bar of California to invest public funds in a manner which will provide the maximum security with best investment return, while meeting the daily cash flow demands of the Bar and conforming to all State statutes governing the investment of public funds and all Resolutions of the Board of Trustees.

#### **Section 2    Objectives**

(a)    Safety Of Invested Funds

- (1) Minimum Standards: Investment instruments must conform to the standards established by the State of California as set forth in Section 3. As these standards are modified by the State from time to time, this investment policy will automatically adopt the revised standards.
- (2) Diversification: To minimize risk of loss, the State Bar shall diversify its investment portfolio utilizing any combination of investment instruments specified in Section 3.
- (3) Scope: This investment policy applies to all financial assets under direct control of the State Bar, including all of the funds accounted for in the State Bar quarterly report to the Board and include the General Fund, Restricted Funds, and other funds that may be created from time to time. The State Bar holds no pension trust funds for which it is accountable.

This policy does not apply to investment activities of moneys held by a trustee or fiscal agent and pledged to the payment or security of bonds or other indebtedness, or obligations under a lease, installment sale, or certificates of participation. Such funds are invested in accordance with the statutory provisions governing the issuance, or in the absence of specific statutory provisions, in accordance with the ordinance, resolution, indenture, or agreement of the State Bar of California providing for the issuance. These funds are identified as the State Bar of California Section 457 Deferred Compensation Plan and the Post Employment Benefit Fund.

- (4) Safety of Principal: Safety of principal is the foremost objective of the investment policy. Investments of the State Bar of California shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio.
- (5) Custodianship of Instruments: The State Bar will utilize an independent third party custodian to provide custodial services on all of the State Bar's investments.

- (6) Prudence: Investments shall be made with judgment and care – under circumstances then prevailing – which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived. This standard of prudence shall be applied in the context of managing an overall portfolio. Investment officials acting in accordance with the investment policy and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided that deviations from expectation are reported in a timely fashion, and appropriate action is taken to mitigate adverse developments<sup>1</sup>.
- (b) Liquidity Of Invested Funds: The State Bar's investment portfolio will remain sufficiently liquid to enable the State Bar to meet all operating requirements that might be reasonably anticipated.
- (1) Return on Investment: The State Bar's investment policy shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, commensurate with the State Bar's investment risk constraints and the cash flow characteristics of the portfolio. Investments shall be made with the intent to hold to maturity unless the liquidity needs of the portfolio require that the security be sold or a capital gain be realized in a manner that better positions the overall portfolio in achieving investment policy goals. The ~~Chief Financial Officer~~Finance Director<sup>2</sup> is designated as the official with responsibility for authorizing the sale or liquidation of investments in advance of their scheduled maturity dates.
- (2) Authorized Financial Dealers and Financial Institutions: The ~~Chief Financial Officer~~Finance Director<sup>3</sup> of the State Bar will maintain a list of financial institutions authorized to provide investment services. In addition, a list will also be maintained of approved security broker/dealers, selected by credit worthiness, who are authorized to provide investment services in the State of California.
- (3) The State Bar shall send a copy of the current investment policy to all parties approved to do business with the State Bar. Confirmation of receipt of this policy shall be considered evidence that the dealer understands the State Bar's investment policies, and intends to show the State Bar of California only appropriate investments.

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<sup>1</sup> Pursuant to Government Code sections 825 and 995, the State Bar is required to indemnify the Board of Trustees, its officers and other employees.

<sup>2</sup> PROPOSED PHASE I CHANGE: Language updated.

<sup>3</sup> PROPOSED PHASE I CHANGE: Language updated.



### **Section 3    *Investment Instruments Authorized By The State Of California***

The following table identifies the investment instruments, maturities, portfolio percentage restrictions and other minimum quality requirements established under California Law.

<b>Investment Type</b>	<b>Maximum Maturity</b>	<b>Maximum Specified % of Portfolio</b>	<b>Minimum Quality Requirements</b>
Local Agency Bonds	5 years	None	None
U.S. Treasury Obligations	5 years	None	None
State of California Obligations	5 years	None	None
CA Local Agency Obligations	5 years	None	None
U.S. Agencies	5 years	None	None
Bankers' Acceptances	180 days	40 percent	None
Commercial Paper- Select Agencies	270 days	25 percent of the agency's money	"A-1/P-1/F-1"; if the issuer has issued long-term debt it must be rated "A" without regard to modifiers
Commercial Paper- Other Agencies	270 Days	40 percent of the agency's money	"A-1/P-1/F-1"; if the issuer has issued long-term debt it must be rated "A" without regard to modifiers
Negotiable Certificates of Deposit	5 years	30 percent	None
Repurchase Agreements	1 year	None	None
Reverse Repurchase Agreements	92 days	20 percent of the base value of the portfolio	None
Medium-Term notes	5 years	30 percent	"A" rating
Mutual Funds	N/A	20 percent	See Footnote <sup>4</sup>
Money Market Mutual Funds	N/A	20 percent	See Footnote <sup>5</sup>
Collateralized Bank Deposits	5 years	None	None
Mortgage Pass-Through Securities	5 years	20 percent	"AA" Rating
Time Deposits	5 years	20 percent	None

<sup>4</sup> Must receive the highest ranking by not less than two nationally recognized rating agencies or the fund must retain an investment advisor who is registered with the SEC (or exempt from registration), has assets under management in excess of \$500 million, and has at least 5 years experience investing in instruments authorized by Government Code Sections 53601 and 53635.

<sup>5</sup> Must receive the highest ranking by not less than two nationally recognized rating organizations or retain an investment advisor registered with the SEC or exempt from registration and who has not less than 5 years experience investing in money market instruments with assets under management in excess of \$500 million.

Investment Type	Maximum Maturity	Maximum Specified % of Portfolio	Minimum Quality Requirements
County Pooled Investment Funds	N/A	None	None
Local Agency Investment Fund	N/A	None	None

#### **Section 4    *Surplus Funds***

Surplus funds are defined as those funds not immediately needed for State Bar operations. Surplus funds, however, do not include those minimum balances required by the State Bar's bank to compensate it for the cost of bank services.

#### **Section 5    *Reports Of Investment Activities***

The ~~Chief Financial Officer~~Finance Director<sup>6</sup> will make quarterly reports to the Board of Trustees on the status of the State Bar's Investment portfolio. These reports shall include information as to the type of investment, the amount of money invested with various institutions, market value for securities with a maturity of more than 12 months, purchase and maturity dates, rate of interest, and statement of portfolio liquidity, as required by California state law.

#### **Section 6    *Ethics And Conflicts Of Interest***

Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions. Investment officials and employees shall disclose any financial interests as required by the Conflict of Interest Code for Designated Employees of The State Bar of California and the Conflict of Interest Code for the State Bar Board of Trustees. All persons authorized to place or approve investments shall report annually on Form 700 of the California Fair Political Practices Commission all required economic interests for that year.

#### **Section 7    *Required Review Of State Bar Investment Policy***

This investment policy shall be reviewed at least annually for the purpose of recommending needed changes and modifications. The Chair of the Investment Advisory Subcommittee will be responsible for initiating the review.

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<sup>6</sup> PHASE I PROPOSED CHANGE: Language updated.

## **Section 8    *Investment Advisory Subcommittee***

The Board Planning, Program Development and Budget Committee, will appoint the Chair to the Investment Advisory Subcommittee. The Investment Advisory Subcommittee will consist of four members: the Chair shall be a member of the Board Planning, Program Development and Budget Committee, and the remaining three members may be members of the Board of Trustees and/or individuals with expertise in investment management. The Board Committee shall review the qualifications of, and appoint these non-Board members to serve a one-year term. The Office of Finance shall provide staff support for the committee.

Meetings of the Committee shall be scheduled on a quarterly basis.

**(Source: Board of Governors' Resolutions, September 1996, June 2000, September 2000, May 2005; Planning and Budget Committee Resolution, November 19, 2015.)**

***TAB 4.5***

***USE OF STATE BAR MEETING ROOMS AND FACILITIES POLICY***

**Article 1      Use of State Bar Meeting Rooms and Facilities Policy**

**Article 1**  
**USE OF STATE BAR MEETING ROOMS AND FACILITIES POLICY**

The Executive Director, upon consultation with General Counsel, may authorize use of State Bar facilities at no cost, actual cost, or at market cost.

**(Source: Board of Governors' Resolution, November 2000.)**