

## **AGENDA ITEM IIIA**

### **NOVEMBER 2016**

**DATE:** November 4, 2016

**TO:** Members, Board Executive Committee

**FROM:** Leah Wilson, Chief Operating Officer

**SUBJECT:** Proposed Rule Authorizing the State Bar to Charge a Processing Fee for the Use of a Credit Card, Debit Card, or Electronic Funds Transfer - Request to Release for 30 Day Public Comment Period

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#### **EXECUTIVE SUMMARY**

Currently, State Bar members may pay their annual membership fees by credit card, debit card, or electronic check. When these payments are made, the State Bar is required to pay a processing fee, which the State Bar now absorbs. This Agenda Item proposes adoption of a new State Bar Rule that would authorize the State Bar to charge members an additional fee to defray costs incurred by processing fees relating to the payment of annual membership fees.

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#### **DISCUSSION**

The State Bar currently allows members to pay their annual membership fees by credit card, debit card, or electronic check. When these payments are made, the State Bar is required to pay a processing fee. A processing fee is the amount the recipient of the payment is required to pay to process the transaction, and results from arrangements that can involve financial institutions, credit card companies, and third-party processors. The State Bar currently absorbs the processing fees.

Under Business and Professions Code section 6140, the State Bar has the authority to adopt a rule that would permit the State Bar to charge members an additional fee to defray the cost incurred by processing fees relating to the payment of annual membership fees. Section 6140 provides:

- a) The board shall fix the annual membership fee for active members for 2016 at a sum not exceeding three hundred fifteen dollars (\$315).
- b) The annual membership fee for active members is payable on or before the first day of February of each year. If the board finds it appropriate and feasible, it may provide by rule for payment of fees on an installment basis with interest, by credit card, or other means, and may charge

- members choosing any alternative method of payment an additional fee to defray costs incurred by that election.
- c) This section shall remain in effect only until January 1, 2017, and, as of that date, is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

(Bus. & Prof. Code, § 6140.)<sup>1</sup>

The scope of the statutory authority to charge members an additional fee to defray the costs incurred by the State Bar is not entirely clear. Although the statute refers in part to “the annual membership fee for active members” the second sentence of subdivision (b) refers to the authority to provide by rule for “payment of fees” in general. To avoid any ambiguity about its scope, the proposed new Rule would cover the payment of “annual membership fees” as that term is defined in State Bar Rules, Title 2, Division 2, Rule 2.10:

“Annual membership fees” are those fees that any member must pay to maintain active or inactive membership in a calendar year. These fees may include additional assessments and costs prescribed by law.

In addition to providing clarity, using this uniform definition would be sensible. For purposes of a rule authorizing the State Bar to charge an additional fee to defray the costs incurred, there does not appear to be any reason to distinguish between active membership fees, inactive membership fees, or other fees a member must pay to maintain membership.

The proposed new State Bar Rule, Title 2, Division 2, Rule 2.18, would provide as follows:

**Rule 2.18 - Payment by credit card, debit card, or electronic funds transfer**

The State Bar is authorized to charge members who choose to pay annual membership fees by credit card, debit card, or electronic funds transfer an additional fee to defray the costs incurred by that election. The State Bar’s Executive Director or his or her designee is authorized to set the amount of any additional fee the State Bar is authorized to charge members under this rule.

This is consistent with the approach that the Judicial Council and courts are taking to credit card processing fees.<sup>2</sup>

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<sup>1</sup> The Legislature adjourned its 2015-2016 session without having enacted a fee bill authorizing the State Bar to collect from active members the basic annual membership fee, as provided under subdivision (a) of section 6140. As a result, all of section 6140 will remain in effect only until January 1, 2017, including subdivision (b), but the statute contains the current authority to adopt the proposed new Rule.

<sup>2</sup> Government Code section 6159(h) authorizes a court (among other public agencies) to impose a fee for the use of a credit or debit card or electronic funds transfer. The statute further requires that any fee imposed by a court be approved by the Judicial Council. Rule 10.820 of the California Rules of Court delegates that authority to the Administrative Director, as specified, and courts are charging processing fees.

## **FISCAL/PERSONNEL IMPACT**

The amount the State Bar would otherwise be required to absorb will vary over time. Increased use results in increased processing fees and decreased use results in decreased processing fees. In addition, processing fees and rates that are charged to the recipient of payments can vary over time. The precise fiscal impact therefore cannot be determined, but staff can make a reasonable estimate based on current usage. Approximately 35-40% of the members pay their annual membership fees online. Using these percentages, and an average processing fee of 2.25%, the State Bar was required to absorb approximately \$512,000 to \$594,000 relating to the payment of 2016 annual membership fees. Under this proposal, all associated savings could be invested in the discipline system.

## **RULE AMENDMENTS**

Proposed adoption of a new State Bar Rule, Title 2, Division 2, Rule 2.8

## **BOARD BOOK IMPACT**

None.

## **BOARD COMMITTEE RECOMMENDATIONS**

It is recommended that the Board Executive Committee authorize the release of the proposed new State Bar Rule, as set forth in Attachments A hereto, for a 30-day public comment period. If the Board Executive Committee agrees, it is recommended that the following resolution be approved:

**RESOLVED**, that the Board Executive Committee authorizes staff to release for a 30-day public comment period proposed new State Bar Rule, Title 2, Division 2, Rule 2.18, as set forth in Attachments A hereto; and it is

**FURTHER RESOLVED**, that this authorization for release for public comment is not, and shall not be construed as, a statement or recommendation of approval of the proposed item.

## **ATTACHMENT(S) LIST**

- A. Proposed Rule Authorizing the State Bar to Charge a Processing Fee for the Use of a Credit Card, Debit Card, or Electronic Funds Transfer