

# **AGENDA ITEM**

## **IIIB. DECEMBER 2016**

**DATE:** December 5, 2016

**TO:** Members, Executive Committee

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

**SUBJECT:** 2017 Membership Fees – Schedule of Fees, Penalties, Charges and Deadlines

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### **EXECUTIVE SUMMARY**

This item provides for placing 2017 membership fees and penalties on the State Bar's Schedule of Charges and Deadlines (Appendix A) and setting 2017 inactive membership fees at \$155, as permitted under California Business and Professions Code § 6141. It also provides for other costs, penalties and deadlines in 2017.

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### **BACKGROUND**

The Schedule of Charges and Deadlines (Appendix A) lists members' mandatory fees, penalties and deadlines for penalties, and is updated by the Board of Trustees at least annually to reflect the appropriate amounts.

This year, active member fees were set by the Nov. 17, 2016, Supreme Court Order (S237081) at \$297, plus the following statutory fees: \$25 for discipline (Bus. & Prof. Code § 6140.6), \$40 for Client Security Fund (Bus. & Prof. Code § 6140.55), \$10.00 for LAP (Bus. and Prof. Code § 6140.9) and \$40 for Legal Services Assistance (from which a member may choose to opt-out, Bus. & Prof. Code § 6140.03) for a total of \$412. The Supreme Court ordered that payment is due March 1, 2017.

The Supreme Court Order states that the \$297 assessment specifically excludes any funding for the State Bar's legislative lobbying, elimination of bias and bar relations programs. At the Nov. 18, 2016, Board of Trustees meeting, the Board voted to allow two optional donations: one for legislative activities (recommended amount of \$10) and one for elimination of bias (recommended amount of \$10).

Regarding inactive member fees, the California Business and Professions Code § 6141 requires that each year the Board of Trustees fix the amount to not exceed \$75 plus the following statutory fees: \$25 for discipline (Bus. & Prof. Code § 6140.6), \$10 for Client Security Fund (CSF) (Bus. & Prof. Code § 6140.55), \$5.00 for LAP (Bus. and Prof. Code § 6140.9), and \$40 for Legal Services Assistance (from which a member may choose to opt-out, Bus. & Prof. Code

§ 6140.03) for a total of \$155. In 2016, inactive members could also choose to opt-out of \$5 from the fee for legislative activities and \$5 for elimination of bias and bar relations functions.

In this item, the Board will approve 2017 membership fees and penalties on the State Bar's Schedule of Charges and Deadlines (Appendix A) and set the 2017 inactive membership fees at \$155, as permitted under California Business and Professions Code § 6141, et seq. It will also set other costs, penalties and deadlines for 2017.

## **DISCUSSION**

### **Annual Membership Fees<sup>1</sup>**

Active Members		
Source	Purpose	\$ Amount
§ 6140	General	297
§ 6140.03	Legal Services Assistance	40
§ 6140.55	CSF	40
§ 6140.6	Discipline	25
§ 6140.9	LAP	10
Total Active Fee		412

Inactive Members		
Source	Purpose	\$ Amount
§ 6141	General	75
§ 6140.03	Legal Services Assistance	40
§ 6140.55	CSF	10
§ 6140.6	Discipline	25
§ 6140.9	LAP	5
Total Inactive Fee		155

### **Legislative Activities<sup>2</sup>**

The Board of Trustees approved a \$10 recommended active member donation to support legislative activities at its November 18, 2016, meeting.

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<sup>1</sup> This agenda item does not address the optional donations and programs that are unchanged from 2016.

<sup>2</sup> For active members, the Supreme Court specifically excluded the \$5.00 optional deduction for legislative activities, and the \$5 optional deduction for elimination of bias and bar relations. On Nov. 18, 2016, the Board of Trustees voted to allow a recommended donation of \$10 for legislative activities and a recommended donation of \$10 for elimination of bias.

For inactive members, the statutory \$5 opt out required by Business and Professions Code § 6140.05 was not impacted by the Supreme Court's order, and thus will continue to be available.

Staff seeks approval to include an inactive member \$10 optional legislative activities donation. Doing so will allow the billing and payment functionality for inactive and active members to closely mirror one another, making the system easier to design and administer.

### **Elimination of Bias**

The Board of Trustees approved a \$10 recommended active member donation to support elimination of bias at its November 18, 2016, meeting.

Staff seeks approval to include an inactive member \$10 optional elimination of bias donation. Doing so will allow the billing and payment functionality for inactive and active members to closely mirror one another, making the system easier to design and administer.

The Supreme Court Order provided that the active member fee specifically excludes any funding for elimination of bias and Bar relations programs.

Staff seeks approval to eliminate the optional deduction of \$5 for elimination of bias and bar relations. (The \$5 optional deduction for elimination of bias and bar relations was established by Board resolution in 1999.) Doing so will allow the billing and payment functionality for inactive and active members to closely mirror one another, making the system easier to design and administer.

### **\$40 Legal Services Assistance**

For both active and inactive members, Business and Professions Code § 6140.03 provides \$40 will be added and allocated from the annual membership fees only for the purposes established pursuant to § 6033, except to the extent that a member elects not to support those activities. The financial support is for nonprofit organizations that provide free legal services to persons of limited means. Members electing not to support the funding of legal services to persons of limited means may deduct the \$40 from his or her membership fees.

### **Waiver of Membership Fees ("Scaling")**

Under § 6141.1, an active member who has a total gross annual individual income from all sources of less than \$40,000 may request to scale or reduce annual membership fees by 25%.

## **Penalties**

### **Late Payment Penalties**

Under § 6143, the Board is authorized to impose penalties on any member, active or inactive, for failing to pay any fees, penalties or costs after they become due. Rule 2.13 of the Rules of the State Bar provides that "Late payment of annual membership fees is subject to the penalties set forth in the Schedule of Charges and Deadlines." (Attachment A) Rule 2.33(C) further imposes a reinstatement fee—in addition to accrued fees, penalties, and costs—that a suspended member must pay in order to terminate the suspension for nonpayment. For 2017, staff recommends that one penalty be assessed on March 2, the day after the March 1 deadline, in the amount of \$100 for active fees and \$30 for inactive fees, which is the same amount as 2016.

### **MCLE Noncompliance and Reinstatement from MCLE Inactive Enrollment**

Rule 2.71 of the Rules of the State Bar pertaining to member compliance with Minimum Continuing Legal Education requirements provides that “Fees for noncompliance are set forth in the Schedule of Charges and Deadlines.” (Attachment A) These include fees set by the Board for MCLE noncompliance and for reinstatement to terminate MCLE inactive enrollment, which are then included in the Schedule of Charges and Deadlines. The amount recommended for the MCLE noncompliance fee is \$75. The amount recommended for the reinstatement fee is \$200. These fee amounts are unchanged from prior years.

### **Interest on Client Security Fund Reimbursements**

Under § 6140.5(c), the Board is authorized to set an applicable interest rate for Client Security Fund (CSF) reimbursement costs. The Board has previously set this interest rate at 10% and CSF staff requests that the 10% annual interest rate be retained and calculated from the date of disbursement in 2017. The CSF reimbursement amount, plus any applicable interest rates and costs become part of the membership fee.

### **Penalty for Non-Compliance with Mandatory Fee Arbitration Awards**

The Board is authorized under § 6203(d)(3) to impose an administrative penalty on an attorney who, in a fee dispute with a client, has failed to comply with a binding arbitration award, judgment, or agreement, not to exceed 20% of the amount ordered refunded to the client or \$1,000, whichever is greater. This is unchanged from prior years. The Board in its discretion may also require an attorney to pay the reasonable costs of the arbitration. The non-compliance penalty and costs become part of the membership fee for the next calendar year.

### **Fees and Late Payment Penalties for 2016 New Admittees**

All new members when first admitted to the practice of law are enrolled as active members. (§ 6004; Rules of State Bar, Rule 2.12.) Within 45 days of the invoice date from the State Bar, new admittees must pay initial active fees. For new admittees in 2017, Rule 2.12 provides for the following initial membership fees: full annual fees (\$412) if admitted between January 1 and May 31, 2017; one-half the annual fee (\$206) if admitted between June 1 and November 30, 2017. Staff recommends that a late payment penalty for new admittees in 2017 be assessed as follows: \$100 for those admitted between January 1 and May 31, 2017, and \$50 for those admitted between June 1 and November 30, 2017. The late payment penalties are unchanged from prior years.

### **Date Penalties Imposed**

Attachment A lists the member fees, penalty amounts, scaling amounts, transfer and reinstatement fees, MCLE noncompliance fee, and MCLE audit deficiency fee. The listed penalties are unchanged from 2016. However, the staff recommends that no late payment or compliance penalties incur until March 2, the day after the March 1, 2017 deadline (instead of February 1, 2017) to be consistent with the Supreme Court’s Order regarding the active members fee due date.

### **FISCAL/PERSONNEL IMPACT**

The 2017 proposed budget and financial forecasts are based on the assumption that the active fee will be \$412 and that the inactive fee will be \$155. The plan takes into consideration the \$5

lobbying deduction for inactive members and the \$40 legal services assistance deduction that are available to all members.

## **RULE AMENDMENTS**

This agenda item would revise the Schedule of Charges and Deadlines, which appears at Appendix A of the Rules of the State Bar, in the form contained in Attachment A.

## **BOARD BOOK IMPACT**

None

## **BOARD of TRUSTEES RECOMMENDATION**

**RESOLVED**, that the Executive Committee place the 2017 membership fees and penalties on the State Bar's Schedule of Charges and Deadlines (Appendix A);

**FURTHER RESOLVED**, that the 2017 inactive membership fees is set at \$155; and it is

**FURTHER RESOLVED**, that for inactive members, the \$5 for optional donation for activities in the Bar Relations and Elimination of Bias programs is eliminated; and it is

**FURTHER RESOLVED**, that for inactive members, a recommended \$10 donation for legislative activities and a recommended donation of \$10 for elimination of bias is added; and it is

**FURTHER RESOLVED**, that the penalties for late fees and MCLE compliance be assessed on March 2 (the day after the March 1 deadline) as shown on Appendix A; and it is

**FURTHER RESOLVED**, that the interest on assessed costs for reimbursement to the Client Security Fund be set at 10% annually calculated from the date of disbursement as set forth by the Board, pursuant to Business and Professions Code §6140.5(c); and it is

**FURTHER RESOLVED**, that the administrative penalty on failure to comply with binding arbitration is charged at a fee not to exceed 20% of the amount ordered refunded to the client or \$1,000 whichever is greater.

## **ATTACHMENT LIST**

- A.** Appendix A: Schedule of Charges and Deadlines for 2017