

AGENDA ITEM

54-181 MAY 2017

DATE: May 11, 2017

TO: Members, Audit Committee
Members, Board of Trustees

FROM: Leah Wilson, Chief Operating Officer
Christine Wong, Chief Financial Officer

SUBJECT: 2016 Audited Financial Statements, Sections' Revenue and Expenditure Statement and Mandatory Fee Statement

EXECUTIVE SUMMARY

This is a report of action taken on April 24, 2017 by the Board Audit Committee Chair and Vice Chair to receive and approve filing of the Audited Financial Statements for Years Ended December 31, 2016 and 2015. Pursuant to Business and Professions (B&P) Code sections 6145, 6031.5(a), and 6222, which requires the statements to be certified by the Treasurer and sent by April 30th of each year to the Board of Trustees, the Chief Justice of the Supreme Court and to the Assembly and Senate Committees on Judiciary.

In addition, the accounting firm of Moss Adams, LLP, has examined the Statement of Expenditures of Mandatory Membership Fees ("Mandatory Fee Statement") and prepared its Independent Auditor's Report. After its receipt by the Board of Trustees and later in the year when the 2018 annual billing statements are mailed to members, the examined statement and the auditor's report will be published by posting on the State Bar's Web site with notice to members in the billing statements and the December 2017 issue of the *California Bar e-Journal*.

BACKGROUND

A. Annual Filing of Audited Financial Statements

Business and Professions Code Sections 6145, 6031.5(a) require the State Bar to undergo an annual financial statement audit by an accounting firm that meets certain qualifications. The audit should also include an examination conducted on the receipts and expenditures of the Sections, to ensure that the receipts of the Sections are being applied, and their expenditures are being made, in compliance with subdivision (a) of Section 6031.5. The audit is to be completed and submitted to the Board of Trustees, the Legislature and Supreme Court before April 30th each year. The State Bar's fiscal year end is December 31st.

For many years, the Board of Trustees has held a special meeting in April to “receive and order filed the audited financial statements.” This has been the practice even though there is no legislative requirement or Board policy requiring Board action. The only requirement in statute is for the Board Treasurer to certify transmission of the statements. The Board action requested is simply to receive – not to approve. The audited statements cannot be changed by the Audit Committee or the Board and must be submitted to the Legislature and Supreme Court by the deadline regardless of any Board action.

To streamline the process this year, on April 24, 2017, the Audit Committee Chair and Vice Chair met with Moss Adams, LLP, and authorized staff to file the Audited Financial Statements For the Years Ended December 31, 2016 and 2015 to the Legislature and Supreme Court. On April 25, 2017, staff also distributed the 2016 audited financial statements to the Audit Committee.

On April 28, staff completed the legislative filing of the State Bar’s Audited Financial Statements For the Years Ended December 31, 2016 and 2015 (Attachment A), the Statement of Receipts Collected and Expenditures of Sections For the Year Ended December 31, 2016, along with an independent auditor’s report from Moss Adams (Attachment B).

B. Mandatory Fee Statement

To comply with the constitutional requirements for collection of mandatory membership fees under *Keller v. State Bar of California*, 496 U.S. 1 (1990), the State Bar must prepare each year an audited statement of its major categories of expenses showing that no mandatory bar dues were used for political or ideological activities not “necessarily or reasonably incurred for the purpose of regulating the legal profession or improving the quality of legal services available to the people of the State.” The purpose of the Statement of Expenditures of Mandatory Fees is to provide an explanation of the mandatory membership fees that each bar member must pay under state law in order to practice law in California. It describes and separates expenditures of mandatory membership fees by program into “chargeable” and “non-chargeable” categories. Because of the deductions for the full expense of these programs and the State Bar’s policy to fund them solely with voluntary revenues received from members electing not to take the deductions, the statement does not present any “non-chargeable” activities that are supported by the mandatory portion of the annual membership fees. The statement is prepared using the State Bar’s most recently completed audited financial statement and shows the major categories of expenses with a brief description of each category so that each bar member may gauge whether the expense is justified under the *Keller* standard. See, *Keller*, 496 U.S. at 17; *Chicago Teachers v. Hudson*, 475 U.S. at 307 n. 18.^[1] An independent auditor must then verify the Statement of Expenditures of Mandatory Fees. The Statement of Expenditures of Mandatory Membership Fees is then published by posting on the State Bar’s Web site at www.calbar.ca.gov and notice in the annual membership billing statement to bar members.

^[1] A member may dispute the State Bar’s determination that the expense may be charged to the member as part of the mandatory dues and have the challenge heard by an independent decision-maker. Rules of State Bar, Rule 2.17; see, *Chicago Teachers v. Hudson*, 475 U.S. at 307.

To explain the basis for the 2018 membership fee, staff has prepared a Statement of Expenditures of Mandatory Fees using the recently completed audited financial statement for the period ending December 31, 2016. The accounting firm of Moss Adams has examined the 2016 Statement of Expenditures of Mandatory Fees and prepared its Independent Auditor's Report (Attachment C).

DISCUSSION

None.

FISCAL/PERSONNEL IMPACT

None.

RULE AMENDMENTS

None.

BOARD BOOK IMPACT

None.

BOARD GOALS & OBJECTIVES

State Bar's 2016 Strategic Plan Goals and Objectives – Goal 3: Improve fiscal and operational management, emphasizing integrity, transparency and accountability.

BOARD COMMITTEE RECOMMENDATIONS

Staff recommends that the Board receive the examined Statement of Expenditures of Mandatory Membership Fees for the year ending December 31, 2016, and Independent Auditor's Report, copies of which are attached. It is further recommended that the Board authorize its publication when the 2018 annual billing statements are mailed to members by the posting of the statement and report on the State Bar's Web site together with notice of the posting in the billing statement and the December 2017 issue of the California Bar e-Journal.

In addition, staff recommends that the Board receive the Statement of Expenditures of Mandatory Membership Fees for the year ending December 31, 2016, and Independent Auditor's Report (Attachment C). It is further recommended that the Board authorize its publication when the 2018 annual billing statements are mailed to members by the posting of the statement and report on the State Bar's Web site together with notice of the posting in the billing statement and the December 2017 issue of the California Bar e-Journal.

RESOLUTION

WHEREAS, on April 24, 2017, the Board Audit Committee Chair, who is authorized to review the draft financial statements and direct staff to submit them to the Legislature and Supreme Court on behalf of the Board of Trustees, adopted a resolution to receive and order filed the Audited Financial Statements For the Years Ended December 31, 2016 and 2015; and it is hereby

RESOLVED, that the Board of Trustees hereby affirms the action taken by the Board Audit Committee Chair on behalf of the Board; and it is

FURTHER RESOLVED, that upon the recommendation of the Audit Committee, the Board hereby receives the Statement of Expenditures of Mandatory Membership Fees For the Year Ended December 31, 2016, and the accompanying Report of the Independent Auditor, copies of which are attached hereto; and it is

FURTHER RESOLVED, that when the billing of the 2018 membership fees is mailed to members of the State Bar, staff is directed to post the Statement and Report on the State Bar's Web site and to notify members of the posting in the December 2017 issue of the State Bar's e-Journal.

ATTACHMENT(S) LIST

- A.** Financial Statements and Report of Independent Auditors For the Years Ended December 31, 2016 and 2015 (with AU-C 260 and AU-C 265)
- B.** Statement of Receipts Collected and Expenditures of Sections and Report of Independent Accountants For the Year Ended December 31, 2016
- C.** Statement of Expenditures of Mandatory Fees and Report of Independent Accountants For the Year Ended December 31, 2016