

OPEN SESSION

AGENDA ITEM

707 DEC 2017

DATE: November 27, 2017

TO: Members, Board of Trustees

FROM: Leah Wilson, Executive Director
Kevin Harper, Interim Chief Financial Officer
Dina DiLoreto, Program Director, Attorney Regulation & Consumer Resources

SUBJECT: Proposed Elimination of Bias Deduction and Resulting Amendment to 2018 Schedule of Fees, Penalties, Charges and Deadlines

EXECUTIVE SUMMARY

This item proposes an amendment to 2018 annual licensing fees so as to designate \$2 of the \$315 active attorney mandatory licensing fee, and \$2 of the \$75 inactive attorney mandatory licensing fee, to support Elimination of Bias programs, and therefore making this \$2 amount optionally deductible for each attorney.

BACKGROUND

The Business and Professions Code (BPC) requires that each year the Board of Trustees fix the amount of the annual fees for licensed attorneys, not exceeding the amounts specified in section 6140¹ for those eligible for the active rate, and in section 6141 for those eligible for the inactive rate plus other specified amounts in related provisions. At its November 2017 meeting, the Board approved the 2018 Schedule of Charges and Deadlines, setting the active rate at \$430 and the inactive rate at \$155, consistent with statutory authority under SB 36 (Stats. 2017, ch 422). The \$430 active rate is comprised of \$315 for the General Fund (§6140), \$40 for Legal Services Assistance (§6140.03), \$40 for the Client Security Fund (§6140.55), \$25 for Discipline (§6140.6), and \$10 for the Lawyer Assistance Program (§6140.9). The \$155 inactive rate is comprised of \$75 for the General Fund (§6141), \$40 for Legal Services Assistance (§6140.03), \$10 for the Client Security Fund (§6140.55), \$25 for Discipline (§6140.6), and \$5 for the Lawyer Assistance Program (§6140.9).

This item requests Board approval for an amendment to the approved rate structure by designating \$2 of the \$315 mandatory active licensing fee, and \$2 of the \$75 mandatory inactive licensing fee,

¹ All statutory references are to the California Business and Professions Code unless otherwise indicated.

for Elimination of Bias programs, and therefore making this \$2 amount optionally deductible for each attorney².

DISCUSSION

For 2018, staff recommends that \$2 of the annual fee be dedicated to funding the State Bar's Elimination of Bias programs. Until 2017, a similar deduction covered "Bar Relations and Elimination of Bias," and totaled \$5. The Supreme Court did not approve the \$5 deduction in 2017. As a result, and in conjunction with concurrent organizational reform activities at the State Bar, the Office of Bar Relations was eliminated in early 2017. With respect to Elimination of Bias funding, the Bar converted the deduction to a voluntary donation for 2017. Given the passage of a 2018 fee bill staff now proposes that the line item related to Elimination of Bias funding return to its original format as an opt out. The suggested amount of the deduction is \$2 instead of \$5 given the elimination of the Office of Bar Relations and other efficiencies that have been implemented over the course of the last year. As outlined below, the estimated revenue that will be generated by this opt out amount is expected to be sufficient to support the costs of the program; these costs are consistent with 2017 program funding levels.

Budgeted expenses for the Elimination of Bias Fund per the 2018 Preliminary Budget adopted by the Board of Trustees on November 3, 2017, are as follows (in thousands):

Personnel Expenses	\$ 201
Travel & Training	46
Supplies and Postage	12
Occupancy	2
Telecommunications	2
Other Outside Services	14
Indirect Costs	<u>58</u>
Total Expenses	<u>\$ 335</u>

The 2018 budget assumes 248,450 active and inactive attorneys, of which approximately 20,550 are exempt because they are inactive and older than 70. When EOB was financed via an opt-out option in 2014, 2015 and 2016, the percentage of attorneys that did not take the deduction was 70%, 69% and 69%, respectively. Accordingly, the minimum fee needed to support the program is calculated as follows:

Budgeted costs	\$335,000
Total attorneys	248,450
Less exempt attorneys	<u>(20,550)</u>
Total attorneys	227,900
% of attorneys expected to pay	<u>70%</u>
Estimated attorneys paying fee	<u>159,530</u>
Needed fee per attorney	<u>\$2.10</u> (Round to \$2.00)

Under BPC section 6141.1, an attorney on active status who has a total gross annual individual income from all sources of less than \$40,000 may request to scale or reduce annual licensing fees

² *Keller v. State Bar of California*, 496 U.S. 1 (1990), prohibits the State Bar from charging as part of mandatory bar dues the expenses of any political or ideological activities not reasonably related to regulating the legal profession or improving the quality of legal services in California.

by 25%. The treatment of \$2 of the mandatory fee as deductible will affect the calculation for fee scaling. A corresponding amendment to the Schedule of Charges and Deadlines, reflecting the adjusted scaling calculations as a result of the Elimination of Bias opt-out is included with this item as Attachment A.

Currently, 2018 billing statements are slated to be posted on December 1. Should the Board approve staff's recommendation, additional Information Technology testing will be required. As a result, statements will be posted online no later than December 8th, one week later than originally planned.

FISCAL/PERSONNEL IMPACT

This change will have a nominal impact on the Bar's 2018 budget; the 2018 proposed final budget and financial forecasts that will be presented to the Board in January 2018 will reflect this impact.

RULE AMENDMENTS

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

BOARD BOOK IMPACT

None.

STRATEGIC PLAN GOALS & OBJECTIVES 2017-2022

4. Support access to justice for all California residents and improvements to the state's justice system.

Objective: b. Study and implement improved programmatic approaches to increasing access to justice.

RECOMMENDATION

The Finance and Planning Committee recommends that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees approve that a \$2 deduction from 2018 annual fees be provided to each attorney who elects not to fund State Bar programs that support the elimination of bias; and it is

FURTHER RESOLVED, that the resulting fee scaling calculation changes be applied, as reflected on the attached "Appendix A: Schedule of Charges and Deadlines for 2018" (Attachment A).

ATTACHMENT(S) LIST

A. Appendix A: Schedule of Charges and Deadlines for 2018

RULES OF THE STATE BAR OF CALIFORNIA
APPENDIX A: SCHEDULE OF CHARGES AND DEADLINES FOR 2018

ANNUAL FEES

Adopted July 2007
Revised December 1, 2017

The Rules of the State Bar provide that "If a rule refers to the Schedule of Charges and Deadlines, the referenced date or amount is part of the rule."¹ Unrevised rules state such amounts or dates in their text or otherwise indicate what they are.

Charges and deadlines are adopted by the Board of Trustees unless otherwise indicated.

Note: Charges are base amounts that may be increased as specified by rule or otherwise authorized by law.

<i>Rule</i>	<i>Description</i>	<i>Amount</i>	<i>Deadline</i>
2.11	Annual fees at active rate	\$430.00	February 1
	Annual fees at inactive rate	\$155.00	February 1
2.12	(A) Admitted between January 1 and May 31	\$430.00	45 days from invoice date
	(B) Admitted between June 1 and November 30	\$215.00	45 days from invoice date
	(C) Administrative fee for admission in December	None	N/A
2.13	Penalties for late payment of annual fees received at the State Bar or USPS-postmarked <i>after February 1</i> .		
	Billed at active rate	\$100.00	February 1
	Billed at inactive rate	\$30.00	February 1
	Attorneys admitted between Jan. 1 and May 31	\$100.00	45 days from invoice date
	Attorneys admitted between June 1 and Nov. 30	\$50.00	45 days from invoice date
2.15	(A) Scaling deadline for qualified active attorneys (25% reduction of base active fee of \$385 <u>383</u>)	\$333.75 <u>334.25</u>	February 1 or 45 days from date of invoice if admitted between January 1 and May 31
	(B) Scaling deadline for qualified employers (25% reduction of base active fee of \$385 <u>383</u>)	\$333.75 <u>334.25</u>	February 1
2.31	(A) Transfer to active status	\$430.00	For transfer at any time
	(B) Transfer to inactive status	\$155.00	February 1
2.33	(C)(2) Reinstatement fee to terminate suspension for nonpayment ²	\$100.00	At time reinstatement is requested
2.71; 2.90	MCLE noncompliance	\$75.00	February 1; August 30
2.90	MCLE audit deficiency	\$200.00	August 30
2.71; 2.93	Reinstatement fee to terminate MCLE inactive enrollment	\$200.00	At time reinstatement is requested

¹ State Bar Rule 1.20(L).

² Business & Professions Code § 6143 provides that the reinstatement fee may not exceed double the amount of delinquent dues, penalties, or costs.