



The State Bar of California

OPEN SESSION AGENDA ITEM MAY 2022 FINANCE COMMITTEE III.B

DATE: May 19, 2022

TO: Members, Finance Committee

FROM: Leah Wilson, Executive Director

SUBJECT: Proposed Amendment to Rule 2.11 (Due Date and Form of Payment, Licensee Fees): Request to Circulate for Public Comment

EXECUTIVE SUMMARY

The State Bar collects licensing fees from approximately 190,000 active and 75,000 inactive attorneys annually. Efforts have been made to increase the efficiency of the billing process, through automation, acceptance of online payment from firms, not just individual licensees, and a reduction in reliance on physical mail. Although most licensees pay their fees electronically, many individual licensees, and firms, continue to pay by check.

There are a significant number of check payments submitted to the State Bar annually that do not conform to stated payment guidelines. These nonconforming payments cause significant workload issues for the State Bar during the billing cycle, resulting in the need to augment staffing resources, and for all staff to work an inordinate number of hours during this period in order to timely process all payments by the February 1 due date. This item seeks authorization to issue a proposed rule change for public comment that would provide the State Bar with new tools to incentivize the submission of conforming payments.

BACKGROUND

The State Bar collects licensing fees from approximately 190,000 active and 75,000 inactive attorneys annually.

A host of changes were made to the licensee billing process in the years 2016 and 2017 to encourage online payment and reduce reliance on physical processes including establishing a platform for law firms (agencies) to make payments for multiple attorneys, the transition to electronic versus mailed fee statements, and the introduction of bar cards “print-on-demand” as opposed to strictly physical bar cards. These changes served to make the payment process easier for licensees, and reduce the environmental impact caused by hard mail, check processing, and physical bar card production. In addition, significant cost savings were realized by the State Bar resulting from the transition away from manual and physical billing processes. These cost savings have been used in part to support internal resource reallocations within the State Bar, namely, to augment to the budget of the Office of the Chief Trial Counsel.

Although online payment modalities are available and preferred, payment by check continues to be an option. When paying my check individual attorneys should calculate fees online through My State Bar Profile and pay by electronic check through the bank portal, or print the resulting coded invoice and mail along with a physical check. Agencies, paying for significant numbers of attorneys, are asked to use the agency billing platform, where they can list the bar numbers of all of those attorneys whose fees should be paid, and then pay the calculated amount online, or print the generated invoice and mail along with a physical check.

These outlined processes for payment by check are not being followed by all individual and agency payors, resulting in significant fiscal and operational burdens on the organization. Staff seeks a rule change that would expressly authorize the State Bar to require the form and format of payment and to allow for delayed processing, or rejection, of non-conforming payments.

DISCUSSION

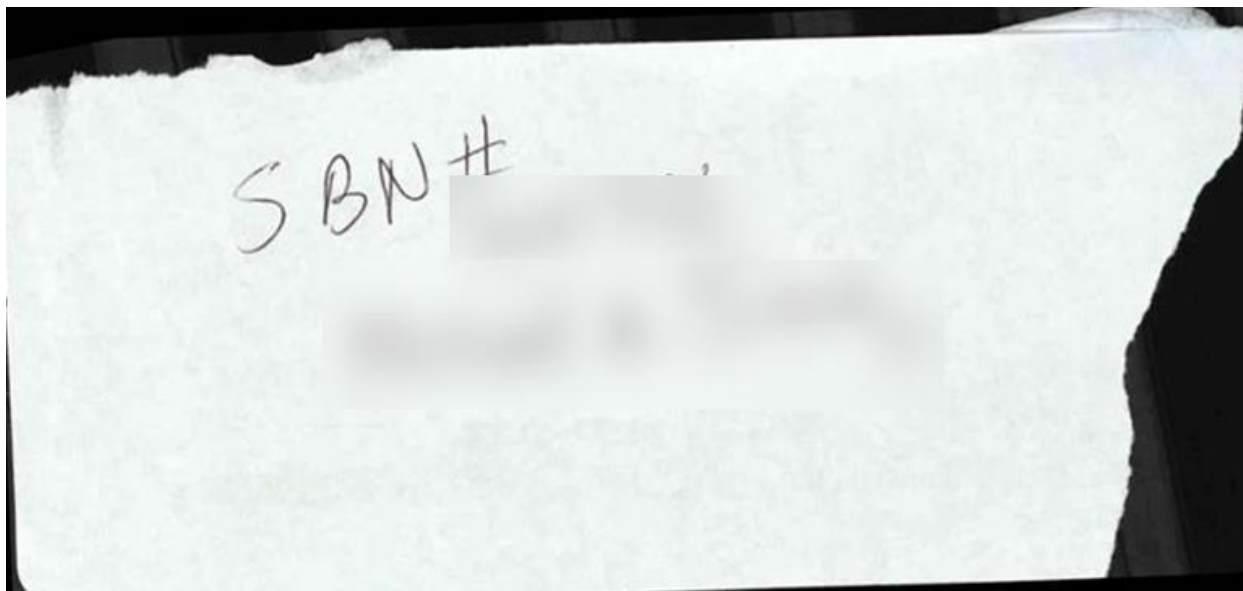
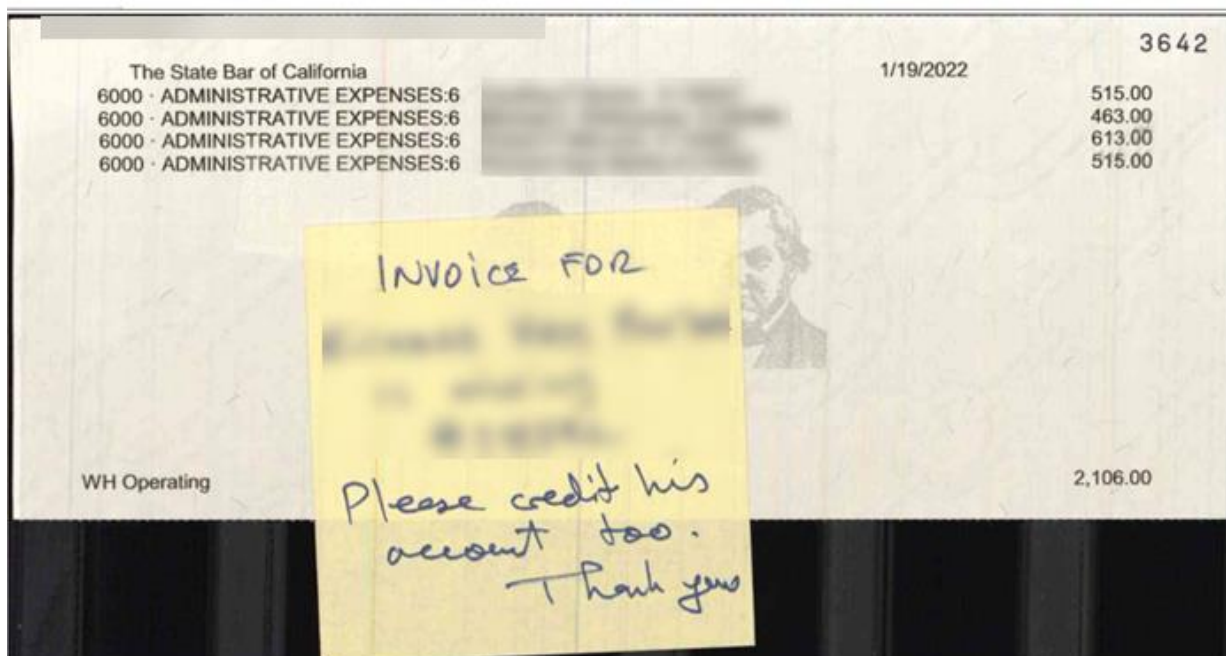
Over the course of the last two billing cycles it has become clear that the benefits of online payment are not being fully realized. There are two primary areas of concern, as described below.

INDIVIDUAL PAYORS PAYING BY CHECK AND NOT SUBMITTING PROPER FEE STATEMENT

To process payments and ensure that they can be reconciled, all payments must have both the payee’s Bar number and a value-added key (VAK), which is an auto generated number that is used by Wells Fargo, the State Bar’s bank, to match the payment to the correct licensee. When Wells Fargo receives a payment that does not have a matching bar number and VAK the bank sends those payments to its Online Decisioning (OLD) portal where State Bar staff review and resolve transactions manually.

As of February 28, 2022, nearly 1,900 transactions, representing close to 10 percent of check payments received, had been sent to the OLD portal for the 2022 billing cycle. It takes approximately 15 minutes for staff to research each of these transactions.

The primary cause of payments being sent to OLD is the failure to use the State Bar generated fee statement when submitting payment. Examples of the kinds of check payments received that are not accompanied by a corresponding statement are reflected in the images below.



AGENCY PAYORS NOT USING AGENCY BILLING PLATFORM

As noted above, the State Bar established in agency billing platform to facilitate licensee fee payment by law firms on behalf of all attorney employees. Agencies are asked to update the platform with a current list of attorneys for whom fees are being paid as part of the billing process annually, as well as to designate selections for opt-out and opt-in donations, as well as California Lawyer Association membership. After updating information in the platform firms can pay online or print an invoice and submit payment via a single check.

In lieu of following this process however, some firms send multiple checks to the Wells Fargo address with no supporting documentation at all. Others submit information about attorneys for whom payment is being made via email; that information does not accompany the check payment nor is it reflected in the agency billing platform. In some instances, firms have merged but no one has updated the agency billing platform to reflect the merger; in others, firms print the pay by mail invoice for each attorney in the firm and send it to the State Bar with a check but do not enter attorney information into the agency billing platform. This results in State Bar staff having to manually reconcile printed fee statements to individual licensees and to the aggregate check payment received by the firm. This reconciliation process can take hours, or even days, depending on the size of the firm.

Some of these challenges have been driven in part by the State Bar's push to incorporate the collection of extensive demographic data in the attorney billing process itself. This effort, though well-intentioned and effective with respect to demographic data collection, has had the unintended consequence of driving many who previously paid online to pay by check, in an effort to avoid the demographic survey altogether. Recognizing this issue, the billing and attorney census survey processes will be decoupled for the 2023 billing cycle. Staff in the Division of Mission Advancement & Accountability will work to ensure that a new method for collecting demographic data is in place in advance of this split, and that this method is robust, ensuring no meaningful reduction in the amount and quality of demographic data received.

In addition to this change that staff will initiate to address a common payor pain point, staff seeks new tools to incentivize individuals and agencies to adhere to instructions when submitting manual payments. Staff specifically seeks rule authority, via an amendment to State Bar Rule 2.11, to return noncompliant payments and/or to process noncompliant payments after the February 1 payment deadline annually. Either of these approaches may result in late fees being incurred by those individuals and agencies who fail to adhere to payment instructions.

As outlined in item 50-5 on the Board's May agenda: Annual Recommendation Regarding Licensees Not in Compliance with Minimum Continuing Legal Education Requirements, although the annual payment deadline is February 1, the State Bar provides numerous opportunities for licensees to make payment prior to July 1; the July 1 date is the effective date for any suspensions for failure to pay fees that are ultimately ordered by the Supreme Court in any given year. Attorneys who have not paid their fees as of the February 1 deadline are typically sent seven reminder emails between February 1 and June 30. During that timeframe, licensees can make payments, subject to late fee penalties, and are not subject to suspension.

Thus, enactment of the requested rule amendment would likely result in more attorneys being subject to late fee penalties, but should not result in increased numbers of suspensions for failure to pay fees.

State Bar staff will conduct extensive outreach to licensees and firms to notify them of the rule change if adopted, and to proactively support compliance well in advance of the onset of the 2023 billing cycle.

The State Bar recommends that State Bar rule 2.11 be amended to add subsection (B) as outlined in Attachment A.

The proposed rule change will enable the State Bar to reject payments that do not conform to payment guidelines or to process them after the February 1 deadline.

FISCAL/PERSONNEL IMPACT

Implementation of this rule change is estimated to result in savings equivalent to .25 FTE (approximately \$50,000 in salary and benefit costs) annually. Additional late fee assessments generated by application of the new rule may result in increased revenue for the State Bar.

AMENDMENTS TO RULES OF THE STATE BAR OF CALIFORNIA

Title 2, Division 2, Rule 2.11

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: None

RECOMMENDATIONS

Should the Finance Committee concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Finance Committee authorizes staff to make available for a 45-day public comment period the proposed amended rule 2.11 of the State Bar Rules.

ATTACHMENT LIST

- A.** Title 2. Rights and Responsibilities of Licensees, Rule 2.11 (Redline Version)
- B.** Title 2. Rights and Responsibilities of Licensees, Rule 2.11 (Clean Version)

TITLE 2. RIGHTS AND RESPONSIBILITIES OF LICENSEES

Adopted July 2007

DIVISION 2. ANNUAL LICENSE FEES AND PENALTIES

Rule 2.10 Definitions

- (A) “Annual license fees” are those fees that any licensee must pay to maintain active or inactive status in a calendar year. These fees may include additional assessments and costs prescribed by law.¹
- (B) “Penalties” are the surcharges assessed any licensee who fails to pay annual license fees on time.

Rule 2.10 adopted effective June 17, 2006; amended effective January 25, 2019.

Rule 2.11 Due date; Form of payment

- (A) A licensee must pay the annual license fees set forth in the Schedule of Charges and Deadlines each calendar year no later than February 1.
- (B) The State Bar is authorized to prescribe acceptable methods for the payment of annual license fees. Any attempted payment that does not conform to a method prescribed by the State Bar may be rejected. If a licensee does not cure a nonconforming payment, the State Bar may nevertheless process the nonconforming payment before or after the February 1 deadline. Nonconforming payments that are not cured by the licensee or processed by the State Bar by the February 1 deadline subject the licensee to the penalties set forth in rule 2.13 or suspension in accordance with rule 2.33.

Rule 2.11 adopted effective June 17, 2006; amended effective January 25, 2019.

Rule 2.12 New licensees

A new licensee must be enrolled as active and pay initial fees within forty-five days of the invoice date for the fees as follows:

- (A) full annual license fees if admitted between January 1 and May 31;
- (B) half the annual license fees if admitted between June 1 and November 30;
- (C) the administrative fee for admission set forth in the Schedule of Charges and Deadlines if admitted in December.

¹ Business & Professions Code §§ 6140.5, 6140.7.

Rule 2.12 adopted effective June 17, 2006; amended effective July 20, 2007; amended effective January 25, 2019.

Rule 2.13 Late and **non-conforming** payment penalties

Late **or non-conforming** payment of annual license fees ~~is~~ **are** subject to the penalties set forth in the Schedule of Charges and Deadlines.

Rule 2.13 adopted effective June 17, 2006; amended effective January 25, 2019.

Rule 2.14 No refund

Unless these rules provide otherwise, a licensee is not entitled to a refund of annual license fees because of death, resignation, disbarment, transfer to inactive status, entering judicial office, or for any other reason.

Rule 2.14 adopted effective June 17, 2006; amended effective January 25, 2019.

Rule 2.15 Scaling

- (A) An active licensee who has a total gross annual individual income from all sources of less than \$60,478.35 may request a 25% reduction of annual licensee fees. The request must be submitted by the date set forth in the Schedule of Charges and Deadlines and include
- (1) the Active Licensee Fee Scaling Declaration signed under penalty of perjury; and
 - (2) payment of the reduced fee.

New licensees admitted after May 31 do not qualify for scaling.

- (B) An employer that receives State Bar Legal Services Trust Fund grants and is a qualified legal services project or qualified support center as defined by statute² may request a reduction of annual license fees by 25% for an active licensee employed on a continuous full-time basis or an active licensee employed on at least a half-time basis who has no income from other employment related to the practice of law. The request must be submitted by the date set forth in the Schedule of Charges and of Deadlines and include
- (1) the Qualified Employer Fee Scaling Declaration signed under penalty of perjury that the employer is qualified and pays annual license fees on the licensee's behalf; and
 - (2) payment of the reduced fee.

² Business & Professions Code § 6210 et seq.

- (C) Licensees who scale are subject to audit and upon request must provide the State Bar with past federal and state income tax returns or other acceptable documentation of financial condition.
- (D) If the State Bar determines that a licensee is ineligible to scale, the licensee must pay full annual license fees and any late payment penalties.

Rule 2.15 adopted effective June 17, 2006; amended effective July 20, 2007; amended effective November 15, 2013; amended effective January 25, 2019; amended effective January 1, 2020.

Rule 2.16 Waivers

- (A) In this rule, “annual license fees” and “penalties” are construed narrowly and do not include
 - (1) disciplinary costs³ or monetary sanctions,⁴
 - (2) Client Security Fund disbursements and costs,⁵
 - (3) mandatory fee arbitration award penalties and costs,⁶
 - (4) Minimum Continuing Legal Education (“MCLE”) noncompliance or reinstatement penalties, or
 - (5) any other charges that may be added to annual license fees for failure to comply with obligations imposed by court order, statute, or rule.
- (B) To be considered for the current year, a request must be submitted by February 1. Requests submitted after February 1 must be accompanied by full payment of any outstanding charges, which will be refunded if the request is granted.
- (C) The Secretary may waive up to \$1,000 in annual license fees and related penalties for the year in which they are due, provided that the request is
 - (1) in writing;
 - (2) supported by satisfactory documentation; and
 - (3) for any of the following reasons:
 - (a) the licensee serves full-time as a magistrate, commissioner, or referee for a state or federal court of record;

³ Business and Professions Code § 6086.10.

⁴ Business and Professions Code § 6086.13.

⁵ Business and Professions Code § 6140.5.

⁶ Business and Professions Code § 6203(d)(3).

- (b) the licensee is a retired judge who accepts assignments from the Chief Justice of California to act in a judicial capacity at least 90% of the calendar year; or
 - (c) the licensee has a total gross annual household income from all sources of \$20,000 or less, in which case the waiver is 50% of annual license fees.
- (D) The Secretary may waive annual license fees and related penalties for a licensee serving in the Army National Guard, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air National Guard of the United States, the Air Force Reserve, or the Coast Guard Reserve provided that
 - (1) the licensee has been ordered to report to full-time active duty for more than thirty days;
 - (2) a request for waiver is submitted in writing by the licensee, licensee's spouse, relative, law partner or associate, or legal representative and accompanied by:
 - (a) a copy of the order to report for active duty, or
 - (b) a copy of the order to report for active duty and a certified declaration by a JAG officer that the licensee has served on active duty for more than thirty days.

A licensee granted a waiver under this rule must notify the State Bar within thirty days upon termination of the assignment to active duty.
- (E) Annual license fees are waived for the year in which a judicial officer leaves office and returns to active or inactive status in the State Bar.
- (F) Annual license fees are waived for licensees on inactive status who are 70 years of age on February 1.
- (G) Annual license fees may be waived for a licensee who is enrolled in the Pro Bono Practice Program.⁷
- (H) The board reserves the right for good cause
 - (1) to grant requests for waivers denied by the Secretary; and
 - (2) to consider all other requests for waivers.
- (I) A waiver granted under this rule does not remove a court-ordered suspension for nonpayment of fees or penalties.

⁷ See Rules 3.325-3.330

Rule 2.16 adopted effective June 17, 2006; amended effective July 20, 2007; amended effective July 17, 2009; amended effective July 22, 2011; amended effective March 2, 2012; amended effective July 20, 2012; amended effective January 25, 2019; amended effective November 14, 2019.

Rule 2.17 Keller deductions and challenges

- (A) *Keller v. State Bar of California* (1990) 496 U.S. 1 prohibits the State Bar from charging licensees for State Bar expenses for lobbying and certain other activities deemed political and ideological and unrelated to the Bar's permissible goals. California law authorizes licensees to take a deduction for lobbying activities.⁸ The Board of Trustees may also identify each year additional deductions that it deems to be outside the scope of Keller. The State Bar restricts its spending on lobbying and other activities it deems outside the scope of Keller to fees paid voluntarily by licensees not taking the deductions. The deductions and the Bar's most recent audited expenses charged to mandatory license fees are published as a Statement of Expenditures of Mandatory License Fees on the State Bar Web site when the State Bar mails invoices for annual license fees. Notice is also provided in the California Bar Journal and licensees may request a copy of the statement by mail.
- (B) Licensees who believe that the annual Statement of Expenditures of Mandatory License Fees inappropriately includes an expenditure disallowed by Keller may object to the expenditure. The objection must be filed using the Challenge to Mandatory License Fees. The board may allow the objection or promptly refer it to arbitration. Filing an objection does not relieve a licensee of the obligation of paying the invoiced annual mandatory license fees on time.
- (C) For purposes of this rule, "arbitration" means that the State Bar will refer the challenge to an arbitrator selected by the American Arbitration Association. The State Bar may consolidate multiple challenges. The arbitration procedure is specified in the instructions to the Challenge to Mandatory License Fees.
- (D) If an arbitrator determines that a challenged expense is outside the scope of Keller and is allowable as a deduction, the State Bar will refund the amount of the deduction to any public agency that has paid the amount on behalf of a licensee.

Rule 2.17 adopted effective July 20, 2007; amended effective January 1, 2012; amended effective January 25, 2019.

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

The State Bar is authorized to charge licensees who choose to pay annual license 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

⁸ Business and Professions Code § 6140.05.

designee is authorized to set the amount of any additional fee the State Bar is authorized to charge licensees under this rule.

Rule 2.18 adopted effective December 6, 2016; amended effective January 25, 2019.

TITLE 2. RIGHTS AND RESPONSIBILITIES OF LICENSEES

Adopted July 2007

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New licensees admitted after May 31 do not qualify for scaling.

(F) An employer that receives State Bar Legal Services Trust Fund grants and is a qualified legal services project or qualified support center as defined by statute¹⁰ may request a reduction of annual license fees by 25% for an active licensee employed on a continuous full-time basis or an active licensee employed on at least a half-time basis who has no income from other employment related to the practice of law. The request must be submitted by the date set forth in the Schedule of Charges and of Deadlines and include

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¹⁰ Business & Professions Code § 6210 et seq.

- (G) Licensees who scale are subject to audit and upon request must provide the State Bar with past federal and state income tax returns or other acceptable documentation of financial condition.
- (H) If the State Bar determines that a licensee is ineligible to scale, the licensee must pay full annual license fees and any late payment penalties.

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- (K) To be considered for the current year, a request must be submitted by February 1. Requests submitted after February 1 must be accompanied by full payment of any outstanding charges, which will be refunded if the request is granted.
- (L) The Secretary may waive up to \$1,000 in annual license fees and related penalties for the year in which they are due, provided that the request is
 - (1) in writing;
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 - (3) for any of the following reasons:
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- (b) the licensee is a retired judge who accepts assignments from the Chief Justice of California to act in a judicial capacity at least 90% of the calendar year; or
 - (c) the licensee has a total gross annual household income from all sources of \$20,000 or less, in which case the waiver is 50% of annual license fees.
- (M) The Secretary may waive annual license fees and related penalties for a licensee serving in the Army National Guard, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air National Guard of the United States, the Air Force Reserve, or the Coast Guard Reserve provided that
 - (1) the licensee has been ordered to report to full-time active duty for more than thirty days;
 - (2) a request for waiver is submitted in writing by the licensee, licensee's spouse, relative, law partner or associate, or legal representative and accompanied by:
 - (a) a copy of the order to report for active duty, or
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A licensee granted a waiver under this rule must notify the State Bar within thirty days upon termination of the assignment to active duty.
- (N) Annual license fees are waived for the year in which a judicial officer leaves office and returns to active or inactive status in the State Bar.
- (O) Annual license fees are waived for licensees on inactive status who are 70 years of age on February 1.
- (P) Annual license fees may be waived for a licensee who is enrolled in the Pro Bono Practice Program.¹⁵
- (Q) The board reserves the right for good cause
 - (1) to grant requests for waivers denied by the Secretary; and
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- (G) For purposes of this rule, "arbitration" means that the State Bar will refer the challenge to an arbitrator selected by the American Arbitration Association. The State Bar may consolidate multiple challenges. The arbitration procedure is specified in the instructions to the Challenge to Mandatory License Fees.
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