



The State Bar of California

OPEN SESSION AGENDA ITEM 50-8 NOVEMBER 2022

DATE: November 17, 2022

TO: Members, Board of Trustees

FROM: Leah Wilson, Executive Director

SUBJECT: Proposed Amendment to Rule 2.13 (Due Date and Form of Payment, Licensee Fees): Return from Public Comment and Request for Approval

EXECUTIVE SUMMARY

At its July 2022 meeting, the Board of Trustees was slated to approve amendments to State Bar rules 2.11 and 2.13, both related to the policy decision to require that annual license fees be paid in a manner prescribed by the State Bar. Due to an error in preparation of the July agenda, only amendments to rule 2.11 could be approved at the July meeting; rule 2.13 was not brought forward to the subsequent September Board meeting. The Board is asked to approve amended rule 2.13 today.

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 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 allocations within the State Bar, namely, to augment to the budget of the Office of the Chief Trial Counsel.

At its July 2022 meeting, the Board adopted amendments to rule 2.11; these amendments expressly authorize the State Bar to require the form and format of payment and to allow for

delayed processing, or rejection, of nonconforming payments. Based on Finance Committee feedback, additional amendments were identified to allow for the imposition of a noncompliance fee on applicable payors; these amendments were captured in rule 2.13 (Attachment A (redline) and Attachment B (clean)). The Finance Committee authorized a 45-day public comment period for amended [rules 2.11 and 2.13](#).

Amendments to rule 2.13, which were generated by Finance Committee input, were addressed in the July Board [item](#). The published agenda however only referenced rule 2.11. As such the Board was unable to act on proposed amendments to rule 2.13 at its July meeting.

DISCUSSION

The Board is asked to approve amendments to rule 2.13 to allow for the imposition of a noncompliance fee on those licensees or other payors who submit nonconforming licensing fee payments. A full discussion of the issues involved is reflected in the July 2022 agenda item hyperlinked to the present.

FISCAL/PERSONNEL IMPACT

The amount of revenue that may be generated by noncompliance fees resulting from application of the new rule is unknown.

AMENDMENTS TO RULES OF THE STATE BAR OF CALIFORNIA

Title 2, Division 2, Rule 2.13

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

None – core business operations

RECOMMENDATIONS

RESOLVED, that the Board of Trustees, hereby approves and adopts amendments to rule 2.13 of the State Bar rules, as provided as Attachment B, effective November 17, 2022.

ATTACHMENTS LIST

- A. Proposed Amendments to Rule 2.13 (Redlined Version)
- B. Proposed Amendments to Rule 2.13 (Clean Version)

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(s) 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.

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

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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.
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 - (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.

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