



The State Bar of California

OPEN SESSION AGENDA ITEM 710 MAY 2023

DATE: May 18, 2023

TO: Members, Board of Trustees

FROM: Aracely Montoya-Chico, Chief Financial Officer

SUBJECT: Discussion of Admissions Fee Increase Proposals Currently Out for Public Comment

EXECUTIVE SUMMARY

Pursuant to a policy adopted in 2017, the State Bar is required to assess all program fees it charges for services every five years. A fee assessment began in March 2022 for all program fees under the Offices of Admissions. The results of the Office of Admissions fee review were first presented to the Finance Committee at its May 2022 meeting.

This item provides an update on the analysis of fee increases needed to stabilize the Admissions Fund and to achieve the goal of full cost recovery for admissions services. The Office of Admissions recently sought public comment on two options for fee increase proposals. This item outlines those options and provides a brief summary of key themes identified in an initial review of public comment received. The Board is asked to provide feedback and direction to staff in relation to the development of final recommendations for Admissions Fund fee increases to be submitted to the Board for approval at its July 2023 meeting.

BACKGROUND

Pursuant to an internal policy, the State Bar is required to assess all program fees it charges for services every five years. The last fee assessment was conducted in 2017; the present assessment was initiated in 2022 accordingly.

The 2023 Admissions Fund Budget reflects \$17.5 million in revenue and \$24.5 million in expenses, resulting in a deficit of \$7.0 million. At the end of the 2023 the projected Fund

balance is expected to total \$4.0¹ million; the fund is not sufficiently solvent to support operations in 2024 absent fee increases and, likely, operational cost reductions. Admissions reports that increasing testing accommodation requests and escalating facility, costs, proctor, and software costs, along with reductions in the overall number of applicants for various admissions programs, as drivers for the present budget deficit.

The elements of the fee review methodology include: (1) an analysis of program revenues versus costs; (2) an identification of any needed enhancements to program performance or functionality; and (3) an analysis of costs charged by other jurisdictions for similar functions. Based on this methodology, fee increase proposals were developed for most of admissions services reviewed².

In reviewing staff's initial proposals, the Finance Committee considered the viability of a progressive fee structure for admissions service fees, whereby certain applicants would pay more than others to promote the goal of a diverse and inclusive legal profession; the committee directed staff to incorporate progressive fee structure principles to the extent possible.

Staff presented a modified proposal reflecting Finance Committee input to the Committee of Bar Examiners (CBE) in January 2023. The CBE designated three members to meet with staff to generate a final set of fee increase options for CBE consideration; the CBE discussed those options at its meeting in March 2023. Proposed fee increases were also discussed with the Committee of State Bar Accredited and Registered Schools in April 2023 and the Law School Council on May 3. This process ultimately resulted in two options for admissions services fee increases being issued for [public comment](#) by staff. The public comment period will close on May 15, 2023.

In addition to the work that has been done to develop fee proposals and solicit corresponding comment, the State Bar's Office of General Counsel (OGC) conducted a comprehensive legal analysis of Admissions Fund service fees to determine if the State Bar has the authority to authorize fee adjustments or if additional authorizations are needed from the California Supreme Court or Legislature. The table below summarizes the results of OGC's analysis:

Program	Approval by California Supreme Court Necessary?	Approval by California Legislature Necessary?
General Bar Exam	Maybe ³	Yes (late fees)
First-year Law Students' Exam	Maybe	No

¹ To support operations for 2023, the fund balance of the Legal Specialization Fund was consolidated to the Admission Fund adding approximately \$6.9 million of additional reserves.

² No recommendations have been developed for the Legal Specialization program. This function operates at a surplus and its administration will soon be split between the Admissions and General Funds.

³ The "maybe" designation reflects the Office of General Counsel's interpretation of provisions that require the Supreme Court to approve regulations for these programs. In preliminary conversations with the Court, it indicated that it may not view fee changes as changes to regulations requiring its review.

Moral Character Determination	Maybe	No
Law School Regulation	Maybe	No
Foreign Legal Consultants	Maybe	No
Law Office Study	Maybe	No
Multijurisdictional Practice	Maybe	No
Pro Hac Vice	Yes; requires change to Cal. R. Ct. 9.40(e)	No
Out-of-state Attorney Arbitration Counsel	Yes; requires change to Cal. R. Ct. 9.43(f)	No
Practical Training of Law Students	Maybe	No

DISCUSSION

The tables below depict current fee levels and proposed fees under Options 1 and 2. Option 1 fee increases generally reflect the amounts needed to achieve full cost recovery. Option 2 fees are more modest, in most instances capping increases for students/nonattorneys at 10 percent. In some instances, only one option was developed, typically where there are no concerns about the impact of fee escalation on the respective applicant pool and therefore full cost recovery presents no equity concerns. Although Option 2 fees in the aggregate will not result in full cost recovery, the rationale behind this option is that requiring all programs to fully support themselves will limit inclusion and is fundamentally at odds with the State Bar's mission and strategic goals.

Options 1 and 2 both reflect the principle of subsidization – those service areas and applicants most able to absorb costs are targeted for higher increases than those that are more price sensitive.

Projected revenue for each program fee proposed as well as the surpluses and deficits estimated to be generated under both options are detailed in Attachment A.

General Bar Examinations

Fee Type	Current	Option 1	Option 2
GBX Attorney Application	\$983	\$1,500	\$1,200
GBX Application	\$677	\$878	\$745
GBX Test Center Change	\$15	\$100	\$25

The California Bar Examination is one of the primary requirements to become a licensed attorney in the state. Since July 2017, the exam has been given over two days, twice each year.

The exam consists of five one-hour essay questions, one 90-minute Performance Test and the Multistate Bar Examination (MBE), typically 200 multiple-choice questions. Program expenses include the registration process, exam question development, exam administration, testing accommodations, grading and ultimately recommends qualified applicants to the California Supreme Court for admission to practice law in California.

The bar examination fee was last increased in 2016, by five percent.

First-Year Law Students' Examination

Fee Type	Current	Option 1	Option 2
FYLSX Application	\$624	\$1,850	\$685
FYLSX Writer/Laptop Change	\$15	\$50	\$50

The First-Year Law Students' Examination (FYLSX) is a one-day test given remotely twice each year. Law students completing their first year of law study in a Juris Doctor degree program at a State Bar-unaccredited registered law school, or through the Law Office Study Program, and those without two years of college work attending a California-accredited or an American Bar Association (ABA)-accredited law school must take the First-Year Law Students' Exam after completing their first year of law study. Law students who have advanced to their second year of law study at an ABA or California-accredited law school and who have completed a minimum of 60 semester or 90 quarter units of undergraduate work are generally exempt from the exam.

Contrary to the nature of Option 1 fees generally, Option 1 fees for the FYLSX exam do not reflect the general principal of full cost recovery. Instead, Option 1 fees reflect the level needed to achieve a 50 percent funding level. Although this is far from full cost recovery, Option 1 fees represent a 196 percent increase over current fees.

Moral Character Determination

Fee Type	Current	Option 1	Option 2
MCD Attorney Application	\$551	\$1,000	\$675
MCD Student Application	\$551	\$795	\$575
MCD Attorney Extension	\$265	\$500	\$375
MCD Student Extension	\$265	\$375	\$275

In addition to satisfying the requirements of any special admissions programs, and successful passing score on the general bar examination, additional determination is required whether an

applicant possesses the requisite moral character for licensure to practice law, based on standards set forth by the California Supreme Court and other governing law.

The proposed fee structure establishes, for the first time, a distinct attorney versus student fee, reflecting the equity and cost-sharing principles articulated by the Finance Committee.

Law School Regulation

Fee Type	Current	Option 1	Option 2
CALS Annual Report	\$2,170	\$22,900	\$2,800
CALS Inspection (1/5 of 5 year base*)	\$4,400	\$8,000	\$6,000
Unaccredited Annual A	\$725	\$6,000	\$1,000
Unaccredited Annual B	\$1,090	\$9,000	\$1,500
Unaccredited Annual C	\$1,445	\$12,000	\$2,000
Unaccredited Inspection A (1/5 of 5 year flat)	\$1,385	\$6,000	\$1,600
Unaccredited Inspection B (1/5 of 5 year flat)	\$1,800	\$7,000	\$2,200
Unaccredited Inspection C (1/5 of 5 year flat)	\$2,200	\$8,000	\$2,800
*Professional Services	\$275/hour	\$350/hour	\$350/hour

California law schools are approved and accredited by the American Bar Association or the State Bar's Committee of Bar Examiners (CBE). The CBE also regulates California's unaccredited law schools. All California-accredited law schools operate from a fixed-facility campus and are authorized to award a Juris Doctor (JD) degree that qualifies graduates to take the California Bar Examination. California's unaccredited law schools operate either from a fixed-facility campus, by correspondence, or online.

When the fees were last studied in 2017, the CBE regulated 39 schools – 15 that it accredited, referred to as CALS, and 21 that it registered to offer legal education in California (referred to as unaccredited). Currently the State Bar regulates 17 CALS and 13 registered schools. Regulation fees established by the CBE vary by type (accredited or unaccredited) and size (student enrollment), but can largely be lumped into two main recurring types: annual compliance and inspection. Compliance fees are paid each year in November, whereas the periodic inspection fees are paid every five years, based on the inspection schedule. There is a distinction between the unaccredited schools and the CALS in terms of the payment structure for inspection fees: unaccredited schools are charged a flat rate based on their student enrollment size, while the CALS are billed a fee at an hourly rate based on the total staff resources expended during the inspection and subsequent report drafting. This current bill rate is set at \$275/hour and is

recommended to be raised to \$350/hour. Starting in 2018, CALS started to be billed for the estimated 1/5 of their five-year inspection amounts in advance of their inspection dates, based on the desire to even out budgets (the Office of Admissions' and the law schools') year to year.

The landscape of both the number of schools and the size of student enrollments continues to change. A recent rule change that allows certain schools to become jointly accredited with the Western Association of Schools and Colleges Senior Colleges and University Commission (WASC) will further change these projections, as the five-year inspections will no longer be required in the future for the CALS who qualify. While some expenses for external professional consultants are expected to decrease, certain program fixed costs will not.

Foreign Legal Consultants

Fee Type	Current	Proposed Fee
FLC Application	\$370	\$1,000
FLC Renewal	\$497	\$600
FLC Renewal Late	\$100	\$150

A registered foreign legal consultant (FLC) is an attorney or counselor at law (or equivalent) licensed in another country who has received special certification from the State Bar to represent a client in this state. A foreign legal consultant can practice law in a limited manner in California.

There is only one fee increase option recommended for this program reflecting the following: (1) there is no concern about ability to pay for this population; (2) the proposed fee achieves the goal of full cost recovery; and (3) the proposed fee is benchmarked to similar fees charged in other states.

Multijurisdictional Practice

Fee Type	Current	Proposed Fee
MJPI (In-House Counsel)	\$635	\$1,075
MJPL (Legal Aid)	\$635	\$500
MSA (Military Spouse)	\$635	\$500

Non-California attorneys from other U.S. jurisdictions who would like to practice in California are required to register with the State Bar and meet certain qualifications. The goal is to ensure that an attorney licensed in another U.S. jurisdiction who practices in California is appropriately versed in California and other applicable law, including rules regarding ethical conduct.

Categories include attorneys who provide legal services in California exclusively for the qualified institution that employs them (Registered In-House Counsel); attorneys working for a qualified provider of legal aid in civil matters work performed under the supervision of a California attorney (Registered Legal Aid Attorneys); and attorneys whose spouse is a member of the military ordered stationed in California are permitted to register to practice law under the supervision of a California attorney (Registered Military Spouse Attorneys).

The proposed fee increase of 69 percent for Registered In-House Counsel will support reductions in the other two MJP fees and is in alignment with the goal of having costs borne by those with the greatest ability to pay. Reduced MJPL and MSA fees are intended to incentivize participation in both programs, a goal articulated in the State Bar’s 2022–2027 Strategic Plan.

There is only one fee increase option recommended for this program (1) there is no concern about ability to pay for one of the three MJP types; (2) the proposed fee increases in the aggregate achieve the goal of full cost recovery; and (3) the proposed fees support the State Bar’s strategic plan objectives.

Out-of-State Attorney Arbitration Counsel

Fee Type	Current	Proposed Fee
OSAAC Application	\$50	\$500

An attorney who wants to provide legal help as arbitration counsel in California, but who does not have a State Bar of California license, can still serve as long as they apply to the Out-of-State Attorney Arbitration Counsel (OSAAC) program. Lawyers must be in good standing and eligible to practice before another U.S. bar. An attorney who resides in California will not be eligible to participate in this program. The current fee of \$50 is set forth in California Rules of Court [\(9.43f\)](#) and any increase would require California Supreme Court approval.

There is only one fee increase recommended for this program reflecting the following (1) there is no concern about ability to pay for this population; and (2) the proposed fee is benchmarked to similar fees charged in other states.

Pro Hac Vice

Fee Type	Current	Proposed Fee
PHV Application	\$50	\$500

An attorney who doesn’t live, work, or conduct regular business in California can petition the court to represent their client under a title called “Pro Hac Vice.” This Latin term means “for

this occasion." Lawyers licensed in another state must formally petition a California court for permission to appear on behalf of a client on a particular case.

There is only one fee increase recommended for this program reflecting the following: (1) there is no concern about ability to pay for this population; and (2) the proposed fee is benchmarked to similar fees charged in other states.

Law Office Study

Fee Type	Current	Proposed Fee
LOS Notice of Intent	\$158	\$880
LOS Semiannual Reports	\$105	\$525

The Law Office Study (LOS) program allows individuals to qualify to take the California Bar Exam without attending law school, by studying law for four years in a law office or judge's chambers. The program provides an alternative pathway to licensure for those for whom traditional law school is not a good fit. The Notice of Intent is the initial filing to start the program, with reports filed every 6 months thereafter. Semiannual reports are to be submitted after each 6-month study period during the four-year LOS program.

There is only one fee increase recommended for this program reflecting the following: (1) the program is operating at a significant deficit; (2) the proposed fee increases address the deficit; and (3) although the proposed increases are significant, when the LOS is viewed as a law school substitute, the cost compares favorably to cost of a law school education, whether ABA-approved California Accredited Law School. The total State Bar LOS fees as proposed total \$5,000; 2018 average law school costs totaled \$156,000 (ABA at the high-end) or \$69,000 (California accredited schools at the lower-end).

Practical Training of Law Students

Fee Type	Current	Proposed Fee
PTLS Application	\$55	\$60
PTLS Change	\$25	\$30

Practical Training of Law Students is a program that allows a supervised law student certified by the State Bar to negotiate and appear on behalf of a client in the limited circumstances permitted by Rule of Court [9.42](#) and other specific rules of the program.

There is only one fee increase recommended for this program reflecting the fact that only a modest increase is needed to achieve the goal of full cost recovery.

PUBLIC COMMENT SUMMARY

Key themes identified in the public comment analyzed as of the time of the publication of this memorandum include:

- Concerns about the financial burden of fee increases on law students, recent graduates, marginalized, and low-income groups.
- Disagreement with passing the cost of the State Bar deficit onto prospective bar takers.
- Concerns about the impact of fee increases on diversity and inclusion in the legal profession.
- Calls for alternative measures to generate funds for the State Bar deficit.
- Suggestions for major changes to the design and administration of the bar exam and moral character determination process to eliminate the need for high fees.
- Concerns about lack of reciprocity with other states.
- Calls for more information about the cost breakdown of the State Bar admissions services and functions.

ADMISSIONS REORGANIZATION

As noted above, many commenters expressed concern about the cost of Admissions operations. The Office of Admissions recently launched a comprehensive reorganization which will result in a more coherent and well-defined structure for the office, and will establish dedicated leadership and focus, particularly from nonoperations staff, in areas such as Admissions policy, data analysis, customer service, and the development of customer-facing materials.

While the restructure has resulted in the creation of new executive positions, the reorganization will ultimately be cost neutral; positions that have been created reflect repurposed vacant positions, with the cost differential for those positions being covered by savings in other areas of the Office of Admissions budget, namely, professional services.

With respect to the need to identify cost reductions in Admissions operations, staff is assessing exams, namely with respect to bar exam delivery, which will be presented to the Board of Trustees at its July meeting.

SUMMARY

The Board of Trustees is asked to review and provide feedback on the Admissions fee increase options outlined above. If all option 1 fees are adopted, the deficit in the Admissions Fund would result in a surplus of approximately \$403,000. If all option 2 fees are adopted, the Admissions Fund deficit of \$7 million would be reduced to \$4.5 million. Adoption of Option 2 fees may result in reduced service levels currently provided, primarily lengthening response times for the larger programs. See Attachment A for details of each program fee and how each program generates revenue for the entire Admissions Fund.

A comprehensive final set of recommendations for Admission fee increases, reflecting the Board's feedback and public comment, will be presented for action at the Board's July 2023 meeting.

FISCAL/PERSONNEL IMPACT

Option 1 increases in the aggregate would result in the Admissions Fund budget being in a surplus position by approximately \$400,000. Option 2 fee increases would reduce, but not eliminate the Admissions Fund deficit, with a projected continued deficit of approximately \$4.5 million.

AMENDMENTS TO RULES

Yes upon adoption by the Board of the final fee increase recommendations.

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

None – core business operations

ATTACHMENTS LIST

- A.** Admissions Fund Fee Summary Review



Law Study and Exams

Both options include higher increases for applicants who are already licensed attorneys in order to reduce the fee increase impact on students and nonattorney applicants.

Option 1 reflects a “break even” approach—the true cost of providing each service.

Option 2 reflects more modest increases in some areas. While Option 2 is likely more palatable in the short term, your feedback should consider the reality that adopting this option will likely require significant cuts in operational expenses.

Program	Category	Current Fee	Last Increase	Option 1	Option 2
Registration	Student Registration	\$ 119	2016	\$ 150	\$ 150
	Attorney Registration	\$ 214	2016	\$ 300	\$ 250
Bar Exam	Student Application	\$ 677	2016	\$ 878	\$ 745
	Attorney Application	\$ 983	2016	\$ 1,500	\$ 1,200
	Test Center Change	\$ 15		\$ 100	\$ 25
First Year Law Students' Exam	Application	\$ 624	2016	\$ 1,850	\$ 685
	FYLSX writer/laptop change	\$ 15	2016	\$ 50	\$ 50
Moral Character Determination	Application (student/nonattorney)	\$ 551	2016	\$ 795	\$ 575
	Application (attorney)	\$ 551	2016	\$ 1,000	\$ 675
	Extension (student/nonattorney)	\$ 265	2016	\$ 375	\$ 275
	Extension (attorney)	\$ 265	2016	\$ 500	\$ 375
Practical Training of Law Students	Application	\$ 55	2015	\$ 60	
	Request to Change	\$ 25	2015	\$ 30	
Law Office Study	Notice of Intent	\$ 158	2016	\$ 880	
	Semi-annual reports	\$ 105	2016	\$ 525	

**Attorney Special Admissions**

Program	Category	Current Fee	Last Increase	Proposed Fee	Rationale
Multijurisdictional Practice	Application for Registered In-House Counsel	\$ 635	2016	\$ 1,075	Increased costs support reductions in other MJP programs; costs borne by those with greater ability to pay
	Application for Legal Aid Attorney	\$ 635	2016	\$ 500	Reduce pricing to incentivize participation consistent with goals of strategic plan
	Application for Military Spouse Attorney	\$ 635	2019	\$ 500	Reduce pricing to incentivize participation consistent with goals of strategic plan
Out of State Attorney Arbitration Counsel	Application	\$ 50	pre-2014	\$ 500	Fee not increased for many years; high ability to pay; analysis of other states' parallel fees
Pro Hac Vice	Application	\$ 50	pre-2014	\$ 500	Fee not increased for many years; high ability to pay; analysis of other states' parallel fees
Foreign Legal Consultants	Application	\$ 370	pre-2014	\$ 1,000	Fee not increased for many years; high ability to pay; analysis of other states' parallel fees
	Renewal	\$ 497	pre-2014	\$ 600	Fee not increased for many years; high ability to pay; analysis of other states' parallel fees
	Late Renewal	\$ 100	pre-2014	\$ 150	Fee not increased for many years; high ability to pay; analysis of other states' parallel fees

**Law School Regulation**

Option 1 reflects a “break even” approach—the true cost of providing each service.

Option 2 reflects more modest increases in some areas. While Option 2 is likely more palatable in the short term, your feedback should consider the reality that adopting this option will likely require significant cuts in operational expenses.

Program	Category	Current Fee	Last Increase	Option 1	Option 2
California Accredited Law Schools	CALS Annual Report	\$ 2,170	2018	\$ 22,900	\$ 2,800
	CALS Inspection* (1/5 of 5 yr base)	\$ 4,400		\$ 8,000	\$ 6,000
Registered Unaccredited Law Schools	Annual A (max 19 students)	\$ 725	2018	\$ 6,000	\$ 1,000
	Annual B (max 199 students)	\$ 1,090		\$ 9,000	\$ 1,500
	Annual C (> 200 students)	\$ 1,445		\$ 12,000	\$ 2,000
	Inspection A (1/5 of 5 yr flat)	\$ 1,385		\$ 6,000	\$ 1,600
	Inspection B (1/5 of 5 yr flat)	\$ 1,800		\$ 7,000	\$ 2,200
	Inspection C (1/5 of 5 yr flat)	\$ 2,200		\$ 8,000	\$ 2,800
	* Professional Services (hourly)	\$ 275		\$ 350	\$ 350