



The State Bar of California

OPEN SESSION AGENDA ITEM 709 MAY 2023

DATE: May 18, 2023

TO: Members, Board of Trustees

FROM: Aracely Montoya-Chico, Chief Financial Officer

SUBJECT: Approval of Final Proposal for General Fund Service Fee Increases

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 years¹. A fee assessment began in March 2022 for all Admissions and General Fund service fees in alignment with this policy. The preliminary results of the Admissions fee review were presented to the Finance Committee at its May 2022 meeting. A similar review of General Fund fees was presented in [July 2022](#). In [November 2022](#) staff updated the committee on the fee review effort, indicating that feedback would be requested from affected stakeholders with respect to proposed increases for two programs, Mandatory Continuing Legal Education Providers (MCLE Providers) and Limited Liability Partnerships (LLPs), and that the final proposal for General Fund fee adjustments would be presented to the Board of Trustees for approval at its May 2023 meeting.

This item presents the final recommendations for General Fund program fee increases, reflecting Finance Committee action taken at its May 9 meeting, including with respect to the two fees that were subject to a public comment period.

The Board is asked to approve the final slate of General Fund fee adjustments.

¹ Pursuant to Finance Committee action at its meeting on May 9, 2023, the current fee review policy will be modified to reflect a three-year review cycle and annual Consumer Price Index fee adjustments.

BACKGROUND

The State Bar is required to assess all program fees it charges for services every five years. 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 the General Fund programs reviewed.

In reviewing staff's initial proposals, the Finance Committee asked staff to incorporate progressive fee structure principles to the extent possible.

During the pendency of the staff fee review, the California State Auditor issued a report on the State Bar ([The State Bar of California: It Will Need a Mandatory Licensing Fee Increase in 2024 to Support Its Operations](#)). That report, which included a review of the State Bar's General Fund revenue and expenses, included a recommendation that the State Bar increase program fees to fully cover the costs of service provision. The intent of this recommendation is for the State Bar to use less mandatory licensing fee revenue to subsidize programs that are operating at a deficit.

Based on its assessment of the State Bar's General Fund financial position, the State Auditor recommended licensing fee increases of \$24 and \$6 (active and inactive). That recommendation assumed that the State Bar would increase all General Fund service fees to the level required to achieve full cost recovery.

The staff recommendations presented today align with the State Auditor's recommendations and assumptions to a significant extent. The deviation from the audit report recommendations relates to fees for two programs, Lawyer Referral Services (LRS) and Mandatory Fee Arbitration (MFA). Staff is not recommending any fee increases for these service areas at this time; both programs are currently undergoing operational review and improvement initiatives which are likely to meaningfully impact the fee-for-service assessment. As a result, staff believes it is appropriate to postpone consideration of fee adjustments for the LRS and MFA programs at this time.

Detailed calculations supporting the summary information provided in the body of this memorandum are provided as Attachment A.

DISCUSSION

LAW CORPORATIONS

The Law Corporations Program certifies professional corporations that wish to practice law in accordance with applicable statutes and court rules. A law corporation must annually renew its authorization to practice law by submitting an Annual Report and Renewal. While most states offer a Limited Liability Company registration status (LLC), California is the only state that provides a specific Law Corporations program.

Fee Type	Current	Proposed
Application	\$200	\$250
Renewal	\$75	\$100
Late	\$110	\$110 ¹

Staff recommends the above increases which are expected to generate \$287,000 in new General Fund revenue annually. This funding will be used to make investments in the Law Corporation application and renewal processes and online access to Law Corporation registration information, as well as to support other regulatory functions.

MCLE COMPLIANCE

MCLE compliance involves the auditing of attorneys' continuing education requirements, an effort that can generate fees from attorneys that do not report completion of 25 hours of MCLE in specified subject areas. Attorneys who are late reporting are generally subject to a MCLE Late Penalty, and/or the MCLE Reinstatement Fee if they are administratively suspended. There are also special handling fees to request MCLE credit from providers not on the approved jurisdictions list (MCLE Credit Request) and to request an educational modification (MCLE E-mod) where the attorney is prevented from completing their MCLE requirements due to a physical or mental condition, natural disaster, family emergency, financial hardship, or other good cause approved by the State Bar.

Fee Type	Current	Proposed
Late Penalty	\$75	\$100
E-Mod	\$75	\$100
Reinstatement	\$200	\$300
Credit Request	\$25	\$100

Staff recommends the above increases which are expected to generate \$87,000 in new General Fund revenue annually.

CERTIFICATES OF STANDING

The State Bar issues two types of Certificates of Standing. One of these comprises verification of an attorney's name, bar number, admission date, current status, any name or status changes (procedural history) and any public discipline as of the date of the certificate; the other, which can only be requested by the licensee, includes the information above and also confidential complaint information.

¹ No change is proposed to the late fee as modification of this particular fee would require a statutory change.

Currently, requestors can order up to three documents (multiple copies of the same document or mix and match the different types of documents) for \$25, meaning there is one fee for both. This amount has remained unchanged for over 20 years.

Fee Type	Current	Proposed
Certificates of Standing	\$25 (for both types)	\$40 (per type of certificate)

Staff recommends the above increases, which are expected to generate \$150,000 in new General Fund revenue annually.

LIMITED LIABILITY PARTNERSHIPS

The LLP program certifies professional partnerships to allow partners to limit their liability for the tortious acts of their partners and employees in accordance with statutes and the State Bar's LLP Rules and Regulations. Many states offer LLPs for attorneys, with most set at a single fixed fee per group. California is one of the few states whose fees are determined by the number of individual partners (up to a cap).

Fees for this program have not changed in at least 10 years. The current fees for applications and renewals are set at \$100 for the first two partners and thereafter each partner pays \$50 or \$25 (application and renewal, respectively). Both application and renewal fees are capped at \$2,500. The current fee structure is regressive, in that firms with 1,000 lawyers pay the same amount as firm with 100 lawyers. There are currently 99 LLPs who benefit from the current cap structure. A list of these firms can be found in Attachment C of the November 2022 committee agenda item.

In November staff presented two options for LLP fee increases, both of which eliminated the cap and one of which also increased per partner fees, to the committee, and subsequently solicited feedback from the LLPs who would be impacted by removal of the cap. Only six responses were received. All but one disagreed with the proposed changes. The comments received suggested that the cap should be increased but not eliminated.

After consideration of the feedback received, the Finance Committee voted to advance Option 2 to the Board of Trustees, noting that only the largest firms in the state would be impacted by the elimination of the cap altogether.

Application Fees

Fee Type	Current	Proposed Option 2
First 2 Partners	\$100	\$110
Per Partner Thereafter	\$50	\$55
Cap	\$2,500	None

Renewal Fees

	Current	Proposed Option 2
First 2 Partners	\$75	\$85
Per Partner Thereafter	\$25	\$30
Cap	\$2,500	None

This option is anticipated to generate \$727,000 in new General Fund revenue annually.

MCLE PROVIDER CERTIFICATION

Providers of legal education must be approved by the State Bar for their educational offerings to satisfy attorney MCLE requirements. There are two different types of MCLE providers: single activity providers (SAP) and multiple activity providers (MAP). SAP is an entity approved to hold and grant credit for a single MCLE activity during a two-year period. A MAP is an approved provider that is given authority to offer and grant credit for any MCLE activity that complies with the terms of the MAP agreement, without seeking separate approvals for each program offered. The current MAP renewal cycle is three years. A separate fee is assessed to providers of MCLE that satisfies Legal Specialization (LS) requirements.

The fee increase recommendations for this program draw heavily from the structures in place in other jurisdictions. In response to concerns that smaller nonprofit providers may not be able to absorb the proposed fee increases, this proposal contains a tiered approach for application and renewal fees assessed on for-profit compared to nonprofit providers, including court and government providers. Although MCLE provider nonprofit status is not currently tracked, staff estimates that approximately 47 percent of providers might qualify for this lower-tiered fee.

Existing Fees

Fee Type	Current	Proposed (for-profit)	Proposed (nonprofit)
Legal Specialization SAP Fee	\$22/specialty area add-on	None	None
Legal Specialization MAP fee	\$90/add-on	None	None
SAP Applications	\$90	\$150	\$115
MAP Applications	\$360	\$600	\$460
MAP Renewals	\$360	\$600	\$460

New Fees

Fee Type	Proposed (for-profit)	Proposed (nonprofit)
SAP Late (1-30 days)	\$90	\$90
SAP Late (31 days –2 years)	\$210	\$210
MAP Late Renewals (1- 30 days)	\$300	\$300
MAP Late Renewals (31 days –2 years)	\$750	\$750
MAP Reinstatement	\$50	\$50

State Bar staff solicited feedback from existing MCLE providers regarding the proposed changes to the fee structure, including the proposed fees, presented above. Staff also requested input on additional proposed fees, including course attendance fees, charged at a per hour and per attendee rate, and late fees for failure to timely pay such fees; course attendance reporting and course entry late fees; and a Provider Information Management System (PIMS) administrative fee. In seeking this feedback, staff provided the MCLE providers with information about all of these proposed fees and asked if these changes would affect their capability to provide MCLE in California. Six hundred sixty-six providers responded to the survey (all comments are provided in Attachment C), representing 31 percent of the MCLE Providers solicited. Three hundred fifty (53 percent) of those who responded commented that the proposed fee increases and new fee structure would affect their capability to offer MCLE in California. Within this subset of responses, 194 providers generally objected to all of the proposed fee increases without specifying which of the fees they were most concerned about. Several of these commenters indicated that they would have to consider whether to continue to offer MCLE in California, particularly if offering California MCLE was only a portion of their business, if they provided free MCLE, or if they offered MCLE in addition to their work as a practicing attorney.

Of the comments that specifically addressed one or more of proposed fees increases in this item, only 28 addressed the proposed increases for SAP and MAP applications and MAP renewals, with an additional 5 commenters addressing the proposed new associated late fees and 21 addressing late fees more generally. Only 12 providers raised concerns with proposed changes to the MAP renewal window, moving from three to two years. Many of these commenters indicated that they were not in favor of the proposed fee increases and were also concerned with the possible administrative burden of shortening the renewal period. Some concerns included increased costs for programs that are often offered for free, limited training budgets that would be impacted, and the fact that SAP fee increases could apply to courses serving just a few California attorneys. However, some of the commenters indicated that these increases seemed reasonable or acceptable and in line with other jurisdictions' fees. Additionally, some commenters indicated that raising these fees was preferable to other, more opaque fees being proposed, such as the per attendance fees.

Nearly one third of the commenters specifically addressed concerns with the proposed fees relating to MCLE attendance and the administrative fees, and did not raise concerns with the renewal, application, or late fees proposed here. Many of these providers reported they would have to stop offering MCLE classes as they would be subject to daily fines for attendance information that attorneys often provide outside the deadlines and over which providers do not have direct control. Based on this feedback, staff does not recommend that these additional fees be imposed until the program is able to secure a more reliable and functional database to maintain attendance records.

Based on the survey responses received, staff recommends keeping the same fee proposal presented to the committee in November 2022. As indicated in the request for public comment and in the November 2022 agenda materials, many of these fees are in line with similar fees in other jurisdictions. Additionally, there has not been an increase to these fees in several years and, even with these increases, the MCLE program remains in a deficit. In regard to the comments expressing concern with the proposed changes to the MAP renewal period from three to two years, staff maintains its recommendation that the renewal period be shortened.² Many of the concerns raised about the administrative burden of a shorter renewal period are expected to be addressed by new, streamlined procedures, which are slated to be implemented in the next three months, including allowing for electronic submission of applications and supporting materials. These proposed fees, including the tiered fee proposal for for-profit and nonprofit providers and late fees, require changes to the State Bar rules and are being presented to the Board at its May 18, 2023, meeting. The proposed changes are anticipated to generate \$535,000 in new General Fund revenue annually

OFFICE OF GENERAL COUNSEL FEE ANALYSIS

Last fall, the Office of the General Counsel (OGC) performed a comprehensive legal analysis of each General Fund program fee to determine if the State Bar has the authority to implement fee adjustments or if additional authorizations would be needed from either the California Supreme Court or the legislature. Table 2 summarizes the results of OGC's analysis.

Table 2. Approval Needed of Program Fees

Program	Approval by California Supreme Court Necessary?	Approval by California Legislature Necessary?
MCLE Provider Certification	No	No
Certificates Standing	No	No
MCLE Compliance	No	No

² The proposed revisions to the MAP renewal period are provided in proposed amendments to State Bar Rule 3.609 that will be presented at the Board's May 18, 2023, meeting.

Law Corporations	Maybe ³	Late fees only
LLP's	Maybe	No

SUMMARY

The Board of Trustees is asked to approve the final recommendations for the General Fund service fee increases.

FISCAL/PERSONNEL IMPACT

In total, the impact of the proposed increases would result in additional General Fund revenue of \$1.7 million. In the aggregate, the proposed fee increases fully cover the cost of provision of the specified services; surplus funding in the amount of \$.8 million will in fact be generated. The surplus revenue realized from these fee increases can be (legally) and will be used to both support the State Bar's disciplinary and regulatory functions.

AMENDMENTS TO RULES

Rule changes will be needed to implement the recommended MCLE Provider fee increases. These amendments are included in a separate agenda item on the Board's May 18–19 agenda.

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

None – core business operations

RECOMMENDATIONS

Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Board of Trustees, upon recommendation of the Finance Committee, approves the fee increases as shown in the General Fund Adjustments (Attachment B) and directs staff to implement these increases as soon as is practicable.

³While LC and LLP fees are not part of the State Bar's admissions fund, because these programs involve permitting entities to practice law, they could be viewed as admissions programs. California Rule of Court 9.5 provides for Supreme Court approval of State Bar Rules pertaining to the admission to practice law. State Bar fees are set forth in an appendix to the State Bar Rules, which is part of the State Bar Rules. Changes to LS and LLP fees could thus be viewed as changes to State Bar Rules pertaining to the admission to practice law and requiring Supreme Court approval. Once approved by the Board, the State Bar will submit these proposed fee changes to the Supreme Court to determine if its approval is in fact required and, if so, to consider and approve, disapprove, or modify the proposed fee changes.

Any Board action regarding Law Corporation and/or LLP fee changes is not to take effect until after submission to the Supreme Court for approval and/or a determination that approval by the Supreme Court is not needed.

ATTACHMENTS LIST

- A.** General Fund Fee Summary
- B.** General Fund Fee Adjustments
- C.** LLP and MCLE Provider Fee Proposal Comments

General Fund Fee Summary

ATTACHMENT A

Program	Category	2022 Count	Current Fee	Revenue	Staff Rec	% Change	Revenue
	SAP Applications	1,383	\$ 90	\$ 124,470			
	MAP Applications	124	\$ 360	\$ 44,460			
	MAP Renewals (@3 yrs)	389	\$ 360	\$ 140,040			
MCLE (Provider)	SAP Applications (for profit)	733	\$ 90	\$ 65,969	\$ 150	67%	\$ 109,949
	SAP Applications (non-profit)	650	<i>new</i>		\$ 115	28%	\$ 74,751
	MAP Applications (for profit)	65	\$ 360	\$ 23,564	\$ 600	67%	\$ 39,273
	MAP Applications (non-profit)	58	<i>new</i>		\$ 460	28%	\$ 26,701
	MAP Renewals* (for profit)	206	\$ 360	\$ 74,221	\$ 600	67%	\$ 185,553
	MAP Renewals* (non-profit)	183	<i>new</i>		\$ 460	28%	\$ 126,153
	SAP Late: 1-30 days	346	<i>new</i>		\$ 90	<i>n/a</i>	\$ 31,118
	SAP Late: 31 days-2yrs	346	<i>new</i>		\$ 210	<i>n/a</i>	\$ 72,608
	MAP Late Renewal: 1-30 days	39	<i>new</i>		\$ 300	<i>n/a</i>	\$ 11,670
	MAP Late Renewal: 31 days-2yrs	39	<i>new</i>		\$ 750	<i>n/a</i>	\$ 29,175
	MAP Reinstatement	78	<i>new</i>		\$ 50	<i>n/a</i>	\$ 3,890

Projected Program Revenues: \$ 308,970 \$ 710,839

MCLE (Atty)	MCLE Late	2,394	\$ 75	\$ 179,550	\$ 100	33%	\$ 239,400
	MCLE Reinstatement	114	\$ 200	\$ 22,700	\$ 300	50%	\$ 34,050
	MCLE Credit Requests	200	\$ 25	\$ 5,000	\$ 100	300%	\$ 20,000
	MCLE E-mods	40	\$ 75	\$ 3,000	\$ 100	33%	\$ 4,000

Projected Program Revenues: \$ 210,250 \$ 297,450

CT	Certificate of Standing	10,000	\$ 25	\$ 250,000	\$ 40	60%	\$ 400,000
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Projected Program Revenues: \$ 250,000 \$ 400,000

LC	LC Fee Applications	803	\$ 200	\$ 160,500	\$ 250	25%	\$ 200,625
	LC Renewal	9,903	\$ 75	\$ 742,725	\$ 100	33%	\$ 990,300
	LC Late Fees	1,100	\$ 110	\$ 121,000	\$ 110	0%	\$ 121,000

Projected Program Revenues: \$ 1,024,225 \$ 1,311,925

LLP current	LLP Applicant (first 2 partners)	175	\$ 100	\$ 17,500	<i>See below for 2023 options</i>		
	LLP Applicant (each + partner)	164	\$ 50	\$ 8,200			
	LLP Applicant Cap	3	\$ 2,500	\$ 7,500			
	LLP Renewal (first 2 partners)	2,422	\$ 75	\$ 181,650			
	LLP Renewal (each + partner)	8,998	\$ 25	\$ 224,940			
	LLP Renewal Cap	90	\$ 2,500	\$ 225,000			

Projected Program Revenues: \$ 664,790

LLP fee increase no cap	LLP Applicant (first 2 partners)	175	\$ 100	<i>See above for current</i>	\$ 110	10%	\$ 19,250
	LLP Applicant (each + partner)	944	\$ 50		\$ 55	10%	\$ 51,920
	LLP Renewal (first 2 partners)	2,522	\$ 75		\$ 85	13%	\$ 214,370
	LLP Renewal (each + partner)	36,904	\$ 25		\$ 30	20%	\$ 1,107,120

Projected Program Revenues: \$ 1,392,660

General Fund Fee Adjustments

Program	Category	New Fee
MCLE (Provider)	SAP Applications (for profit) SAP	\$ 150
	Applications (nonprofit) MAP	\$ 115
	Applications (for profit) MAP	\$ 600
	Applications (nonprofit) MAP	\$ 460
	Renewals* (for profit) MAP	\$ 600
	Renewals* (nonprofit) SAP Late: 1-30 days	\$ 460 \$ 90
	SAP Late: 31 days-2yrs	\$ 210
	MAP Late Renewal: 1-30 days	\$ 300
	MAP Late Renewal: 31 days-2yrs	\$ 750
	MAP Reinstatement	\$ 50
MCLE (Atty)	MCLE Late	\$ 100
	MCLE Reinstatement	\$ 300
	MCLE Credit Requests	\$ 100
	MCLE E-mods	\$ 100
CT	Certificate of Standing	\$ 40
LC	LC Fee Applications	\$ 250
	LC Renewal	\$ 100
	LC Late Fees	\$ 110
LLP fee increase no cap	LLP Applicant (first 2 partners)	\$ 110
	LLP Applicant (each + partner)	\$ 55
	LLP Renewal (first 2 partners)	\$ 85
	LLP Renewal (each + partner)	\$ 30

Limited Liabiity Partnerships Program - Comments Received

Name	Professional Affiliation	City	Fee Increase Option A: Keep fees the same and lift \$2,500 cap from the choices below, we ask that you indicate your position on fee increase option A. (This is a required field.)	ENTER COMMENTS HERE	Fee Increase Option B: Increase fees and lift \$2,500 cap from the choices below, we ask that you indicate your position on fee increase option B. (This is a required field.)	ENTER COMMENTS HERE
MARTIN S. CHECOV	O’MELVENY & MYERS LLP	SAN FRANCISCO	DISAGREE with the proposed recommendation		DISAGREE with the proposed recommendation	A comparison should be made with filing and fee requirements in other jurisdictions before making such changes.
Laura Giokas Anonymous	Bryan Cave Leighton Paisner LLP Global Tax Director	St. Louis	AGREE with the proposed recommendation DISAGREE with the proposed recommendation	Increasing the cap is acceptable however the cap should remain in place. For large law firms, subject to the LLP renewal, the increase you suggest, whether it has been over 10 years or not, is over a 1,200% increase. How is that even feasible? COLA for 2023 is about 8.7% yet you are asking me to agree to a 1200% increase?	DISAGREE with the proposed recommendation DISAGREE with the proposed recommendation	Increasing the cap is acceptable, perhaps a tiered approach based on Partner headcount however the cap should remain in place. For large law firms, subject to the LLP renewal, the increase you suggest, whether it has been over 10 years or not, is over a 1,200% increase. How is that even feasible? COLA for 2023 is about 8.7% yet you are asking me to agree to a 1200% increase?
Bradford Hise	Hanson Bridgett LLP	San Francisco	DISAGREE with the proposed recommendation	It is unclear why my firm needs to pay an annual registration fee and how it is used, so I cannot support increasing the fee.	DISAGREE with the proposed recommendation	
Anonymous Craig Adas		Redwood City	DISAGREE with the proposed recommendation DISAGREE with the proposed recommendation		AGREE with the proposed recommendation DISAGREE with the proposed recommendation	

MCLE Provider - Comments Received

[See here for list and detail of comments received for MCLE Provider.](#)