



# The State Bar of California

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## **OPEN SESSION AGENDA ITEM 701 JUNE 2023**

**DATE:** June 12, 2023

**TO:** Members, Board of Trustees

**FROM:** Donna S. Hershkowitz, Chief of Programs & Legislative Director  
Bridget Gramme, Deputy Chief of Programs

**SUBJECT:** Discussion of Next Steps and Potential Action Related to 2024 Fee Bill

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### **EXECUTIVE SUMMARY**

Each year the Legislature sets by statute the licensing fees the State Bar may assess for the upcoming licensing year. The State Bar typically seeks support from the Legislature to include some of its legislative priorities in the bill, and the Legislature typically includes one or more of its own priorities related to State Bar governance or operations. This year's fee bill is Senate Bill 40 (Umbert). The Board previously approved as a legislative priority seeking a fee increase to address the significant structural deficit in the State Bar's budget. This agenda item identifies in detail the components of a fee increase for active licensees of up to \$98 to address budget shortfalls and support for necessary operations of the State Bar. This agenda item also recommends a further legislative priority to change the statutory language which restricts the State Bar's ability to use the net proceeds from the sale of the building. Finally, the agenda item seeks to update the Board on the recently conducted Senate and Assembly Judiciary Committees' Joint Oversight Hearing to ensure the Board has the information needed to identify appropriate next steps.

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### **BACKGROUND**

The State Bar received a \$71 licensing fee increase in 2019, effective for the 2020 licensing year; this is the only licensing fee increase that the State Bar has received in the last 25 years.

In January 2023, the Board adopted a budget which reflects the reality of a structural General Fund operating deficit which, if unaddressed, will entirely deplete reserves in 2024, leaving the State Bar unable to carry out its mission. The budget also contains significant efficiency and cost-cutting measures, including holding the agency to a 15 percent vacancy rate and imposing

a three-month hiring freeze on all vacant positions, which negatively impact the State Bar's ability to carry out its public protection mission.

With these facts in mind (the chronic underfunding of the organization over the last 20+ years and the manifestation of that reality in the State Bar's 2023 budget), also in January 2023, the Board adopted as a legislative priority advocacy for a licensing fee increase. Several other legislative priorities to improve State Bar operations, increase accountability, and help the State Bar fulfill its statutory mission to protect the public, were also adopted in January as well as May. Attachment A provides a high-level summary of all 2023 legislative priorities adopted.

In April 2023, the State Auditor issued its biennial performance audit of the State Bar. The audit, [The State Bar of California: It Will Need a Mandatory Licensing Fee Increase in 2024 to Support Its Operations](#), concluded that the State Bar is in a difficult financial position, resulting largely from rising personnel costs, and that a fee increase of \$24 per active licensee and \$6 per inactive licensee is needed to address growing costs and to replenish the reserve to a fiscally prudent level. The audit noted that "[i]f the State Bar continues to operate its general fund at a deficit, it risks depleting its reserve and not being able to pay for its programs and administrative offices."<sup>1</sup> The audit also directed the State Bar to update the legislature on its 2024 funding needs in October 2023, including as related to the pending sale of 180 Howard Street. Notably, the \$24 recommended increase did not address any facility-related expenses (stemming from either the cost of ownership or leasing); similarly, although the audit called out the State Bar's inability to meet stated performance objectives due to insufficient staffing levels, the \$24 figure did not reflect any augmentation needed to reduce agency vacancy rates.

At its May 2023 meeting, the Board confirmed the need to request a fee increase to support State Bar operations. While it does appear that the State Bar's San Francisco headquarters will be sold prior to the end of 2023 resulting in a one-time infusion of funds, during its May discussion the Board noted that it would be fiscally irresponsible for the organization to rely on one-time funds from sale proceeds to address an ongoing operational deficit. Accordingly, the Board argued strongly for the need to advocate for and secure a fee increase for the 2024 licensing cycle.

On May 23, 2023, the Senate and Assembly Judiciary Committees conducted a joint oversight hearing to highlight issues with the discipline system in particular.<sup>2</sup> The following State Bar Board and staff leadership presented testimony during the hearing: Ruben Duran, Hailyn Chen, Melanie Shelby, Arnie Sowell, Leah Wilson, and George Cardona. Additional Board and staff members attended the hearing and were available were their input needed. The [background paper](#)<sup>3</sup> prepared by committee staff for the hearing identified a number of thoughts and recommendations for improvement.

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<sup>1</sup> California State Auditor, [The State Bar of California: It Will Need a Mandatory Licensing Fee Increase in 2024 to Support Its Operations](#), April 2023, p. 10.

<sup>2</sup> The agenda for the hearing, The California State Bar – Administrative Arm of the Supreme Court: Disconcerting Revelations Raise Questions About its Ability to Protect the Public, can be found [here](#) and [here](#). The video of the hearing may be found [here](#).

<sup>3</sup> Also linked [here](#).

## DISCUSSION

To continue to meet the State Bar's obligations to protect the public, as well as meet the organization's commitments and obligations to staff of the State Bar, the conclusion of the Board and the State Auditor is that the State Bar needs a fee increase. Table 1 below outlines the need for a fee increase for active licensees of up to \$98 to meet the State Bar's obligations,<sup>4</sup> protect the public through client trust account oversight, and fund key proposals proffered by the Senate and Assembly Judiciary Committees (SJUD/AJUD).

The \$98 fee increase does not include any funding to replenish the State Bar's General Fund reserves. The amount needed to achieve the goal of a 2-month reserve level totals approximately \$17 million. Staff believes that this amount can be appropriately funded from the proceeds of the sale of 180 Howard Street. The \$98 calculation thus reflects a downwards adjustment of the State Auditor's \$24 recommended fee increase (from \$24 to \$16) to account for removal of the portion of that recommended increase slated for reserve stabilization. The \$98 does however address obvious omissions in the State Auditor's recommendation, namely facility costs and vacancy rate reductions.

**Table 1. The Need for a Fee Increase**

<b>Core Operations Support</b>	<b>\$68</b>		<b>Public Protection through Client Trust Account (CTA) Oversight</b>	<b>\$19</b>		<b>Key SJUD/AJUD Staff Recommendations</b>	<b>\$11</b>
Address structural underfunding of personnel and operating costs as identified by State Auditor	\$16		Permanent funding for dedicated Bank Reportable Action and CTA complaint team (OCTC)	\$12		Inspector General for the State Bar discipline system	\$2
Annual lease payments upon building sale	\$21		Proactive CTA audit and compliance reviews (Client Trust Account Protection Program)	\$7		Expand diversion opportunities; develop mentorship program to support attorneys at risk of or with lower levels of misconduct	\$6
Staffing to stabilize Complaint Review Unit <sup>5</sup>	\$3					Transition to state budget process	\$3
Stable, increased funding for DEI efforts in support of statutory mission	\$2						

<sup>4</sup> The amounts below reflect the costs that would be assessed on active licensees. Inactive licensees would also realize increases, proportionately adjusted as reflected in the current fee structure.

<sup>5</sup> The Complaint Review Unit (CRU) affords complainants with a "second look" in relation to the Office of the Chief Trial Counsel's decision to close a complaint. CRU has experienced a significant backlog in recent years.

Restore reasonable 7.5% vacancy rate (reduced from 15% + 3-month hiring freeze)	\$26					
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In addition to a licensing fee increase, the State Bar needs greater flexibility in how net proceeds from the sale of 180 Howard Street can be allocated. Business and Professions Code section 6144.1 prohibits the State Bar from expending the net proceeds from the sale of real property, after payment of reasonable costs of acquiring new facilities, “for any purpose until approved by the Legislature by statute.” The statute provides a small exception regarding use of the net proceeds from the sale of 180 Howard Street, noting that up to 10 percent of the net proceeds may be used every fiscal year for improvement of the State Bar’s discipline system. While the State Bar appreciates the recognition of the need to use available funds for the improvement of the discipline system, additional flexibility is needed to ensure that operational needs can be met.

The Board’s decisions regarding a fee increase should be informed by the discussions from the Judiciary Committees’ Oversight Hearing, the agenda, video, and background paper which are linked above. Trustees who were in attendance at the hearing will lead the discussion of this topic at the June Board meeting.

## **FISCAL/PERSONNEL IMPACT**

A fee increase of \$98 per active licensee would generate approximately \$20 million in new General Fund revenue annually. This funding augmentation would eliminate the State Bar’s structural operating deficit, support a return to a more reasonable agency vacancy rate, and enable implementation of the public protection initiatives outlined in the table above.

It is anticipated that the State Bar will be able to achieve the goal of fully funding the General Fund reserve using the proceeds from the sale of 180 Howard Street.

## **AMENDMENTS TO RULES**

None

## **AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL**

None

## **STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS**

Goal 1. Protect the Public by Strengthening the Attorney Discipline System

- a. 2. Secure additional funding for the attorney discipline system.

Goal 1. Protect the Public by Strengthening the Attorney Discipline System

- a. 3. Sustain a well-resourced, motivated, and accountable, prosecutorial workforce.

Goal 1. Protect the Public by Strengthening the Attorney Discipline System

- c. 3. Identify and implement strategies to address other disparities in discipline rates and outcomes, including those related to solo and small firm practitioners.

Goal 1. Protect the Public by Strengthening the Attorney Discipline System

- d. 1. Align and implement recommendations of the Special Discipline Case Audit Committee and the Ad Hoc Commission on the Discipline System.

Goal 1. Protect the Public by Strengthening the Attorney Discipline System

- d. 2. Develop strategies to effectively investigate and prosecute attorneys who commit misconduct, regardless of the nature of their practice, including attorneys in large organizations and firms.

Goal 3. Protect the Public by Regulating the Legal Profession

- d. 1. Implement the Client Trust Account Protection Program.

Goal 4. Protect the Public by Engaging Partners

- d. 1. Collaborate with the legislature and other stakeholders to increase public protection and support the State Bar's mission.

## RECOMMENDATIONS

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

**RESOLVED**, that the Board of Trustees authorizes staff to advocate for an increase of up to \$98 in the active licensee fee, with a proportionate increase in inactive fees; and it is

**FURTHER RESOLVED**, that following feedback from legislative stakeholders, the Board authorizes the Board chair and vice-chair to identify the precise amount of the fee increase sought; and it is

**FURTHER RESOLVED**, that the Board adopts as a legislative priority pursuit of statutory amendments to provide the State Bar flexibility in the use of the net proceeds from the sale of 180 Howard Street.

## **ATTACHMENT LIST**

### **A. 2023 State Bar Legislative Proposals**



# The State Bar of California

## ATTACHMENT A

### 2023 STATE BAR LEGISLATIVE PROPOSALS

June 2023

The State Bar Board of Trustees has adopted the following 2023 legislative proposals to improve State Bar operations, increase its accountability, and fulfill its statutory mission to protect the public.

#### INCREASED ACCOUNTABILITY

- **INSPECTOR GENERAL/DISCIPLINE MONITOR:** Create in statute an independent inspector general position to monitor and audit the Office of Chief Trial Counsel's (OCTC's) investigative and prosecutorial function, the special disciplinary trial counsel (2201 Program), and the Complaint Review Unit; identify and prioritize areas of focus; develop recommendations for corrective actions; regularly review data; assess the policy implementation; develop internal controls that help reduce compliance risk; manage discipline case external audit process.
- **ENHANCED CONFLICT OF INTEREST POLICIES:** Amend selected provisions of: (1) the Political Reform Act to expand and clarify its applicability to the State Bar and expressly subject the State Bar to the Fair Political Practice Commission's administrative enforcement mechanisms; (2) Government Code sections 1090, *et seq.* to codify the State Bar's existing policy and practice to avoid government contracting decisions affected by personal financial interests; and (3) the State Bar Act (section 6036(b))<sup>1</sup> to clarify that Trustees must recuse themselves where a personal non-financial interest *may* prevent them from applying disinterested skill and undivided loyalty to a decision.
- **PARTICIPATION IN THE STATE BUDGET PROCESS:** The State Bar embraces the Legislative Analyst's Office's recommendation that the State Bar participate in the budget process if it is provided with the necessary resources to effectuate this change.

#### PUBLIC PROTECTION

- **CLIENT TRUST ACCOUNT PROTECTION PROGRAM:** Amend section 6091.1 to improve and expand banks' annual reporting of Client Trust Account information to the State Bar to support identification of noncompliant, negligent, or fraudulent activity.
- **ENSURE REIMBURSEMENT OF THE CLIENT SECURITY FUND:** Amend section 6140.5 to provide that an attorney's obligation to reimburse the Client Security Fund is imposed as a penalty, payable to and for the benefit of the State Bar, to promote rehabilitation and protect the public. This would clarify that this obligation is not dischargeable in bankruptcy. See *Kassas v. State Bar of California* (9th Cir. 2022) F.4th 1158.

#### EFFICIENT OPERATIONS

- **TWO-YEAR TERMS FOR BOARD OF TRUSTEES CHAIR:** Amend section 6021 to provide for a two-year term for the chair of the Board of Trustees to maintain continuity and implement lasting change.
- **INSPECTION OF BAR EXAM RESULTS:** Amend section 6065 to conform the statute to current practice, which permits those who did not pass the California Bar Exam to access to their answers electronically for 30 days for review, download, or printing beginning when exam results are released.

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<sup>1</sup> All statutory references are to the Business and Professions Code unless otherwise indicated.

- **ELIMINATION OF OBSOLETE REPORTS:** Eliminate annual statutory reports that have appear to have limited utility: Financial products reporting (sections 6175, *et seq.*); Lawyer Assistance Program (section 6238); and construction-related accessibility claims (Civil Code section 55.31).
- **MINOR ADJUSTMENT OF DUE DATES FOR CERTAIN STATE BAR REPORTS:** Change Annual Audited Financial Statements due date from April 30 to May 30; change Lawyer Assistance Program Annual Report due date (if not discontinued) from March 1 to March 30; change Biennial Diversity Report due date from March 15 to March 30; change Annual Discipline Report due date from October 31 to November 30.

## FEES AND FUNDING

- **LICENSING FEE INCREASE:** Increase the attorney licensing fee to support the operations of the State Bar
- **ELIMINATION OF BIAS:** Support the State Bar’s important DEI initiatives by increasing the elimination of bias fee from \$2 to \$4 for active licensees and to \$3 for inactive licensees, and by making the fee mandatory.
- **JUDICIAL NOMINEES EVALUATION COMMISSION (JNE):** Secure general fund money to support the State Bar’s support for the work of the JNE commission.

## TECHNICAL AMENDMENTS

- **UPDATE INCORRECT REFERENCES TO “THE EXAMINING COMMITTEE”:** Amend sections 6046.6, 6060.3, 6062, 6063, and 6065 to correct inaccurate references to the Committee of Bar Examiners, or “the examining committee,” for activities and responsibilities that are performed by State Bar staff or by the committee under the delegated authority of the State Bar Board of Trustees.
- **DISCIPLINE-RELATED:**
  - Amend section 6007(b)(2) to correctly cross reference section 6190.34 instead of 6190.3.
  - Amend section 6007(d)(2) to better reflect the respective responsibilities of the State Bar Court and the Supreme Court.
  - Amend section 6102(d) to clarify the requirements that must be satisfied to deem an out-of-state conviction a felony under the laws of the California for the purposes of determining whether the Supreme Court must suspend a licensee for the conviction.
  - Amend section 6102(e) to conform to case law and more accurately identify the responsibility of the Supreme Court to determine whether discipline is appropriate when an attorney is convicted of a crime that did not involve moral turpitude.