

DATE: July 9, 2004

TO: Members of the Board Committee on Planning, Program Development and Budget

FROM: Office of Certification

SUBJECT: Setting the Application Fee for the New MJM Programs:
(California Rules of Court, rule 964, Registered Legal Services Attorneys)
(California Rules of Court, rule 965, Registered In-House Counsel)-
Request for Public Comment

ATTACHMENTS:

1. ABA Chart XI Bar Admission Fee
2. ABA Chart XII Other Licenses and Registrations
3. The Committee of Bar Examiners Schedule of Fees
4. Comparison Chart

EXECUTIVE SUMMARY

The Office of Certification (OC) recommends that the Board Committee authorize publication of proposed fees for the Registered Legal Services Attorney and Registered In-house Counsel programs authorized by California Rules of Court 964 and 965 for a 45-day public comment period.

Rules 964, California Rules of Court [Registered Legal Services Attorneys], and rule 965, California Rules of Court [Registered In-House Counsel], authorize the State Bar to establish and administer programs for registering California legal services attorneys and in-house counsel under rules adopted by the Board of Governors. A separate agenda item before this Board Committee requests authorization to publish the proposed rules for public comment. Because the court rules go into effect on November 15, 2004, we are asking for a shortened public comment period in order for the rules and fees to be in place by that date.

Rule 964 allows non-California attorneys relocating to California to work for a single qualifying legal services provider. Rule 965 allows non-California attorneys living in California to work as in-house counsel for a single qualifying institution. Rule 964(e) and rule 965(f) authorize the State Bar to set appropriate initial and annual registration fees, as well as application fees.

Both rules 964 and 965 require applicants to file an Application for Determination of Moral Character. The current fee for that application for persons applying to become members of the State Bar is \$363. The OC proposes to charge the same \$363 for that application to persons applying to become Registered Legal Services Attorneys or Registered In-House Counsel. The application fee will be automatically adjusted as the Board approves adjustments to the fee for persons applying to become Bar members.

The State Bar charges an additional application fee of \$648 for persons applying to become members of the State Bar and take the California Bar examination. The OC proposes to charge persons applying to become Registered In-House Counsel an additional application fee of \$550. This fee will be necessary in order for the OC to establish and operate the administrative structure and systems needed to implement and maintain this program. The fee is consistent with the fee charged by other jurisdictions that have similar programs, the majority of which charge in the \$750-\$1,000 range. The OC believes that the proposed application fee also limits the financial incentive for a non-California attorney to become a Registered In-House Counsel rather than become a member of the State Bar.

The OC proposes charging no application fees for Registered Legal Services Attorney applicants and charging only the moral character investigation fee. Legal services registrants in certain other states have been treated differently based upon the premise that such attorneys are not well compensated and that the organizations they work for have limited funding. Also, the OC anticipates very limited participation in the program, which will mean that the program cannot cover its substantial setup costs with any reasonable fee.

In addition, both Registered In-House Counsel and Registered Legal Services Attorneys will be charged an annual registration fee in an amount equal to the annual membership fee paid by a member of the State Bar.

Questions on this item should be directed to Phyllis Culp at phyllis.culp@calbar.ca.gov or 415-538-2118.

BACKGROUND

California Rules of Court 964 and 965, respectively, permit non-California attorneys to practice law in California as legal services attorneys and in-house counsel on a limited basis, effective November 15, 2004. Rule 964 permits non-California attorneys relocating to California to work for a single qualifying legal services provider. Rule 965 permits non-California attorneys living in California to work as in-house counsel for a single qualifying institution.

Attorneys wishing to practice under rules 964 and 965 must register with the State Bar, and the State Bar is authorized to establish and administer legal services attorneys and in-house counsel registration programs and set appropriate fees. A separate agenda item before this Board Committee requests authorization to publish proposed Registered Legal Services Attorneys and Registered In-House Counsel program rules for public comment.

PROPOSED FEES

Application for Determination of Moral Character

Rule 964 and 965 require attorneys applying for registration under those rules to file an Application for Determination of Moral Character. The current fee for that application for persons applying to become members of the State Bar is \$363. The OC proposes to charge the same \$363 for that application to persons applying to become Registered Legal Services Attorneys or Registered In-House Counsel. The application fee will be automatically adjusted as the Board approves adjustments to the fee for persons applying to become Bar members.

Registered In-House Counsel

The State Bar charges an additional application fee of \$648 for persons applying to become members of the State Bar and take the California Bar examination. The OC proposes to charge persons applying to become Registered In-House Counsel an additional application fee of \$550. This fee will be necessary in order for the OC to establish and operate the administrative structure and systems needed to implement and maintain this program. This includes keeping track of the jurisdictions in which applicants are qualified to practice law, the institutions for which they work in California, whether such institutions meet the requirements of the program, MCLE compliance by Registered In-House Counsel, and other items. The OC also believes that an application fee of \$550 limits the financial incentive for a non-California attorney to become a Registered In-House Counsel rather than become a member of the State Bar.

The proposed Registered In-House Counsel application fee is consistent with fees charged by other jurisdictions that have similar programs. A review of other jurisdictions shows that the application fees for registered in-house counsel run from a low of \$50 in Virginia to a high of \$1,300 in Florida, with the majority charging in the \$750-\$1,000 range.

Registered Legal Services Attorneys

Legal services registrants in certain other states have been treated differently based upon the premise that such attorneys are not well compensated and that the organizations they work for have limited funding. Thus, states like Minnesota subsidize the administration of that program. The OC estimates that only approximately 50 people will apply for the program in the first year and that the number of people applying in future years will be similarly limited. Given the limited number of expected participants, the program cannot cover its substantial setup costs with any reasonable fee. The OC proposes to charge persons applying to be Registered Legal Services Attorneys no fee other than that for the Application for Determination of Moral Character.

Annual Fees

Both Registered In-House Counsel and Registered Legal Services Attorneys will be charged the current annual registration fee in an amount equal to the annual membership fee paid by a member of the State Bar.

FISCAL AND PERSONNEL IMPACT

The new Registered Legal Services Attorneys and Registered In-House Counsel programs will have a substantial fiscal and personnel impact on the OC. The OC estimates that, during the first year of operation, approximately 500 people will apply to become Registered In-House Counsel and that an additional 50 people will apply to become Registered Legal Services Attorneys. It is estimated that these new programs will require at least 2,400 hours of staff time, requiring the hiring of two additional staff.

The OC must incur the cost of building complex new databases to track all of the information related to these two new programs. Substantial personnel time will be required to collect, input and evaluate information about the applicants, the jurisdictions in which they are currently or have been authorized to practice law, any change in their status in those jurisdictions, the qualifying institution for which they are working in California, any move to another qualifying institution or other termination from a qualifying institution, whether such institutions meet the requirements of the programs, any disqualifying changes in the status of such institutions, MCLE compliance by such applicants, etc.

In addition, each Registered In-House Counsel must renew his or her registration annually and each Registered Legal Services Attorney can only practice as such for a total of three years. Participants in both programs must comply with accelerated and continuing MCLE requirements. As a result, there will be substantial demands on staff time and department resources in future years with respect to those persons who apply to the programs in the initial year of operation. Of course, the OC expects that substantial additional revenue will be received in future years from new applicants.

EFFECTIVE DATE

The OC is asking for an effective date of November 15, 2004 to coincide with the effective date of rules of court 964 and 965 and the proposed program rules.

PROPOSED BOARD COMMITTEE ACTION

If the Board Committee concurs with the foregoing recommendations, it would be appropriate to adopt the following resolution:

RESOLVED that the Board Committee for Planning, Program Development and Budget authorizes the publication for a 45-day comment period of the following fee structure for the Registered Legal Services Attorney and Registered In-House Counsel Programs:

For applications pursuant to Rule 964, California Rules of Court

[Registered Legal Services Attorney], and the proposed program rules, there shall be no application fee other than the \$363 charged for the processing of applications for moral character; and for applications pursuant to rule 965, California Rules of Court [Registered In-House Counsel], and the proposed program rules, a fee of \$550 plus the current fee of \$363 for, for a total fee of \$ 913; and it is

FURTHER RESOLVED that the fee for processing of applications for the determination of moral character will be automatically adjusted as the Board approves adjustments to that fee; and it is

FURTHER RESOLVED that Registered In-House Counsel and Registered Legal Services Attorneys will be charged the current annual registration fee in an amount equal to the annual membership fee paid by a member of the State Bar; and it is

FURTHER RESOLVED that the authorization to publish proposed fees for the Registered Legal Services Attorneys and Registered In-House Counsel Programs is not, and shall not be construed as, a recommendation for approval by the Board.