

Lobbying and Optional Program Deductions for 2006 Membership Fees

This is an explanation of the 2006 membership fees and the substantive and procedural constitutional requirements of The State Bar of California under *Keller v. State Bar of California*, 496 U.S. 1, 110 S. Ct. 2228, 110 L. Ed. 2d 1 (1990).

In California, all persons licensed to practice law in the state must be admitted and enrolled as a member of The State Bar of California. The State Bar is a constitutional entity established in the judicial branch to assist the California Supreme Court in the admission, discipline and regulation of the legal profession. The Legislature also charges the State Bar with engaging in other activities to improve the administration of justice and to advance the science of jurisprudence. As a requirement of bar membership, California lawyers must pay statutorily mandated membership fees. The fees are used primarily to fund core functions of lawyer discipline and regulation, and a small percentage has also been used to further the State Bar's statutory charge to provide assistance to improve the administration of justice. For example, mandatory member dues have been used to fund activities such as formulating rules of professional conduct, disciplining members for misconduct, administering the Client Security Fund to reimburse clients for pecuniary losses caused by member misconduct, evaluating nominees for judicial office, conducting a variety of legal education programs for members and the public, developing programs to improve the delivery of legal services and the access of the public to the judicial system, and providing various member services.

In the past, mandatory membership fees have also been used to fund studying and recommending changes in legislation, working with the Judicial Council, and facilitating relations among national, regional and local voluntary bar associations.

The United States Supreme Court's decision in *Keller v. State Bar of California*, 496 U.S. 1, placed constitutional limitations on the charging of membership fees to support bar activities that are political or ideological. The Supreme Court held that the First Amendment prohibits the State Bar from charging objecting members the expenses of activities with "political or ideological coloration" that are not reasonably related to the advancement of the State Bar's purposes of regulating the legal profession or improving the quality of legal services. The Court acknowledged that it may not always be easy to discern where the line falls between those activities that may be charged or not charged to members. But the Court made clear that there are no valid constitutional objections to core State Bar functions such as disciplining lawyers or proposing ethical rules for the profession. *Keller*, 496 U.S. at 14-16.

To meet the constitutional requirements of *Keller*, the State Bar adopted in 1990 the procedures outlined in *Chicago Teachers v. Hudson*, 475 U.S. 292, 106 S. Ct. 1066, 89 L. Ed. 2d 232 (1986) and suggested by the Supreme Court in *Keller*, 496 U.S. at 17. Under the procedures, the State Bar set an amount each year that members could deduct from the annual membership fees for activities that it found outside the purview of *Keller*. Under *Chicago Teachers*, the State Bar calculated the amount of the deduction by using the prior year's audited expenditures of mandated bar dues categorized as chargeable or nonchargeable under *Keller*.

The Supreme Court noted in *Keller* that alternate procedures to those in *Chicago Teachers* could likewise accommodate objecting members. *Keller*, 496 U.S. at 17. In 1999, the State Legislature altered the procedures used by the State Bar to comply with *Keller*. Instead of using a prior year's expenditure to estimate the portion that could be deducted, the Legislature enacted a statutory five-dollar deduction for legislative activity outside of *Keller* purview and limited the maximum amount of such expenditures to the total revenue paid voluntarily by those members electing not to take the deduction. Cal. Bus. & Prof. Code §6140.05. In addition, legislation precluded the funding of State Bar Sections and the Bar's former Conference of Delegates with membership fees; funding must be from voluntary fees or donations, and the cost of any administrative support provided by the State Bar must be fully reimbursed. Cal. Bus. & Prof. Code §6031.5, added by Stats. 1999, ch. 342, §1.5. In 2002, the Conference of Delegates of California Bar Associations, an independent mutual benefit corporation, was formed and assumed the functions of the Conference of Delegates; although the State Bar is permitted to collect voluntary dues or contributions for the successor entity, the State Bar must be fully reimbursed for this cost and no mandatory dues may be used to fund the successor entity. Cal. Bus. & Prof. Code §6031.5 as amended Stats. 2002, ch. 415, §4, effective September 9, 2002. The State Bar's receipts and expenditures are audited annually to assure compliance with these funding restrictions. Cal. Bus. & Prof. Code §6145.

In 2000, the State Bar's Board of Governors adopted a procedural approach similar to that enacted by the Legislature and established a five-dollar deduction for the State Bar's Bar Relations and Elimination of Bias program. Funding for the program is now limited to revenues paid voluntarily by members not taking the deduction and other voluntary donations and sources.

In the future, the State Bar's Board of Governors may amend again the procedures due to changes in circumstances, statutes, or case law. A member may obtain a copy of the current procedures governing the 2006 membership fee by writing to the Office of the Secretary of the State Bar at the State Bar's main office at 180 Howard Street, San Francisco, California 94105-1639.

Availability Of Optional Deductions From 2006 Membership Fee

For 2006, members have an option to deduct a total of \$10 from the annual fee. This \$10 deduction includes a \$5 "Lobbying Deduction" and a \$5 "Bar Relations & Elimination of Bias Deduction." The "Lobbying Deduction" is given pursuant to Cal. Bus. & Prof. Code §6140.05, which states that members who elect not to support lobbying and related activities outside the parameters in *Keller* may deduct \$5 from the annual fee. In 2006, the State Bar will continue to treat as optional and nonchargeable the expense of all its legislative activities, not just those specified by §6140.05. As a result, funding of all State Bar legislative activity, whether within or outside *Keller*, will be limited to revenues paid voluntarily by those members not taking the deduction. The "Bar Relations & Elimination of Bias Deduction" provides a \$5 deduction to those members who do not wish to support programs to maintain relations with voluntary bar associations or to address issues of access to justice and the elimination of bias in the legal profession and justice system based on race, ethnicity, gender, sexual orientation, or disability to increase participation of such minority group attorneys who have been under-represented in the administration and governance of the State Bar's programs and activities. Like its legislative activities, the State Bar funding for these activities is limited to revenues paid voluntarily by members electing not to take the deduction and other voluntary sources.

Consequently, for 2006, revenues from mandatory membership fees, which all members must pay, will be expended only on activities that are necessarily or reasonably related to regulating the legal profession or improving the qual-

ity of legal service. A listing and description of the major categories of the chargeable activities, together with an explanation of the nonchargeable and optional activities to which the Lobbying Deduction and the Bar Relations & Elimination of Bias Deduction apply, appear in the State Bar's Statement of Chargeable and Nonchargeable Expenses for the Year Ending Dec. 31, 2004, which has been audited by the accounting firm of Deloitte & Touche, LLP. A copy of the audited statement and the Independent Auditors' Report are printed with this notice. This information is also available on the State Bar's Internet site at www.calbar.ca.gov or by contacting the Member Services Center at 1-888/800-3400.

Any member who does not wish to support the legislative or the bar relations or elimination of bias activities of the State Bar may take the Lobbying Deduction, the Bar Relations & Elimination of Bias Deduction, or both by following the instructions for the 2006 membership fee statement. Each deduction must be marked by the member on his or her dues statement and returned together with the timely payment of membership fee, less only the amount of each deduction taken. For more information about how to take these deductions, contact the Member Services Center at 1-888/800-3400.

Challenges To Chargeable Expenses And Their Calculation

Any member may dispute and challenge the accuracy of any of the categories of chargeable expenses in the Statement of Chargeable and Nonchargeable Expenses on the grounds that a chargeable expense category includes activities with political or ideological coloration that are not reasonably related to the State Bar's purpose of regulating the profession or improving the quality of legal service or that the amount calculated for the category was erroneous. A member's challenge must be submitted individually and in writing. The written challenge must include the challenger's name, address, telephone number and bar membership number and should identify the challenged category. A challenger must sign the challenge and submit it along with timely payment of the 2006 membership fee less only the Lobbying Deduction, the Bar Relations & Elimination of Bias Deduction, or both.

IMPORTANT!

ANY WRITTEN CHALLENGE MUST INCLUDE FULL AND TIMELY PAYMENT OF THE MEMBERSHIP FEE LESS ONLY THE LOBBYING DEDUCTION OR THE BAR RELATIONS & ELIMINATION OF BIAS DEDUCTION, AND MUST BE POSTMARKED OR DELIVERED BEFORE THE END OF BUSINESS ON MARCH 15, 2006, TO:

SECRETARY
THE STATE BAR OF CALIFORNIA
180 HOWARD STREET
SAN FRANCISCO, CALIFORNIA 94105-1639

Upon receipt of a properly submitted challenge, the State Bar will place the disputed amount of the challenger's fee in an interest-bearing escrow account. At its next regularly scheduled meeting following the deadline or as soon thereafter as the matter may be considered, the Board of Governors will then decide whether to give a pro rata refund to the challenger or to submit the dispute for expeditious arbitration before an impartial arbitrator. If the dispute is submitted for arbitration, the Board in its discretion may consolidate all challenges. The challenger(s) and the State Bar select a mutually agreeable, impartial arbitrator. In consolidated challenges, the arbitrator may be selected by an agreement between the State Bar and 75 percent of the challengers. If there is no agreement on an impartial arbitrator within 30 days following the decision to arbitrate, an impartial arbitrator will be appointed by the American Arbitration Association. The State Bar may extend the time to select the arbitrator, up to 30 additional days. The arbitration will be heard at the San Francisco or Los Angeles office of the State Bar, as determined by the State Bar. The proceedings are informal, and the State Bar will have the burden to show that the disputed matters are within the scope of permissible activities for which mandatory fees may be used under the constitutional standard in *Keller*. The challenger(s) will be given an opportunity to present their own evidence and to present written arguments in support of their challenge(s). The arbitrator will issue a written decision and any award.

THE STATE BAR OF CALIFORNIA

Statement of Chargeable and Nonchargeable Expenses for the Year Ended December 31, 2004, and Independent Auditors' Report

INDEPENDENT AUDITORS' REPORT

Board of Governors
The State Bar of California
San Francisco, California

We have audited the accompanying Statement of Chargeable and Nonchargeable Expenses (the "Statement") of The State Bar of California (the "State Bar") for the year ended December 31, 2004. This Statement is the responsibility of the State Bar management. Our responsibility is to express an opinion on the Statement based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the Statement is free of material misstatement. An audit includes consideration of internal control over financial reporting as a basis for designing procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the State Bar's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the Statement, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the Statement. We believe that our audit provides a reasonable basis for our opinion.

The accompanying Statement was prepared for the purpose of showing the allocation of certain expenses into chargeable and nonchargeable categories as described in Note 2 to the Statement and is not intended to be a complete presentation of the State Bar's revenues and expenses in conformity with accounting principles generally accepted in the United States of America.

In our opinion, such Statement presents fairly, in all material respects, the

chargeable and nonchargeable expenses of the State Bar for the year ended December 31, 2004, on the basis of presentation described in Note 2.

This report is intended solely for the information and use of the Board of Governors, management of the State Bar, and members of the State Bar as defined in Note 1 to the Statement, and is not intended to be and should not be used by anyone other than these specified parties.

Deloitte & Touche LLP, San Francisco

April 22, 2005

The State Bar of California

**STATEMENT OF CHARGEABLE AND NONCHARGEABLE EXPENSES
YEAR ENDED DECEMBER 31, 2004**

	Amount	Percentage of Total Program Expenses
CHARGEABLE EXPENSES AND RELATED PROGRAM REVENUE (Note 2):		
Discipline	\$44,996,672	90.08%
Administration of justice	458,454	0.92
Lawyer Assistance Program	1,404,163	2.81
Competence	1,935,308	3.87
Program development	1,156,378	2.32
Total chargeable program expenses	49,950,975	100.00%
Allocated administrative overhead	8,985,890	
Program revenue	(4,384,831)	
Net chargeable expenses	54,552,034	
NONCHARGEABLE EXPENSES AND RELATED PROGRAM REVENUE (Note 2)		
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TOTAL NET CHARGEABLE AND NONCHARGEABLE EXPENSES	\$54,552,034	

See notes to Statement of Chargeable and Nonchargeable Expenses

THE STATE BAR OF CALIFORNIA

**NOTES TO STATEMENT OF CHARGEABLE AND NONCHARGEABLE EXPENSES
YEAR ENDED DECEMBER 31, 2004**

1. SIGNIFICANT ACCOUNTING POLICIES

Description of Entity — The State Bar of California (the "State Bar") was first formed as a public corporation by the California State Legislature's passage of the State Bar Act on July 29, 1927. On November 8, 1960, voters amended the California Constitution to add the State Bar as a constitutional agency in the judicial branch of government. Membership in the State Bar and payment of an annual membership fee are required as a condition of the practice of law in the State of California.

Basis of Accounting — To ensure observance of limitations and restrictions placed on the use of resources available to the State Bar, the accounts of the State Bar are maintained in accordance with the principles of fund accounting. This is the procedure by which resources for various purposes are classified for accounting and reporting purposes into funds established according to their nature and purpose.

Accounting principles generally accepted in the United States of America are applied by the State Bar in conformance with pronouncements of the Governmental Accounting Standards Board ("GASB"). Amounts in the Statement of Chargeable and Nonchargeable Expenses (the "Statement") were derived from the State Bar's audited 2004 financial statements.

Use of Estimates — The preparation of the Statement requires management to make estimates and assumptions. Actual results could differ from those estimates. These estimates and assumptions affect the reported amounts of chargeable and nonchargeable expenses during the reporting period.

2. BASIS OF PRESENTATION

The accompanying Statement was prepared for the purpose of showing the allocation of certain expenses into chargeable and nonchargeable categories. Although derived from the State Bar's audited 2004 financial statements, the Statement is not a substitute for the financial statements, nor is it intended to be a complete presentation of the State Bar's revenues and expenses in conformity with accounting principles generally accepted in the United States of America.

The State Bar Act sets the annual membership fee for members of the State Bar. The amount of the annual membership fee, however, is subject to certain adjustments. The United States Supreme Court in *Keller v. State Bar of California*, 496 U.S. 1 (1990) ("*Keller*") held that the State Bar could not use mandatory membership fees paid by an objecting member to fund political or ideological activity that was not necessarily or reasonably related to the State Bar's purpose of regulating the legal profession or improving the quality of legal services. The Statement provides the basis for the membership fee. It describes and separates the "chargeable" expenses, which a member must pay as part of the annual membership fees, and the "nonchargeable" expenses, if any, which a member is not required to pay. In calculating the chargeable and nonchargeable expenses, absolute precision is not expected nor required pursuant to *Chicago Teachers v. Hudson*, 475 U.S. 292, 308 (1986). Expenses included in the Statement are derived from expenses included in the general fund (except program costs funded by filing or other fees), the building fund, client security fund, the lawyers assistance fund, and the support and administration fund of the State Bar. Program revenue included in the Statement represents convention income, continuing legal education fees, *California Bar Journal* revenues and other program revenues that are used to fund the related program expenses.

Since January 1, 2000, amendments to the State Bar Act have provided each member with the option of deducting \$5 from the annual membership fee for lobbying and related activities outside of the parameters established in *Keller*. (Cal. Bus. & Prof. Code §6140.05.) The amendments also have prohibited the State Bar from funding the activities of its Conference of Delegates and Bar sections with mandatory membership fees. (Cal. Bus. & Prof. Code §6031.5.) In October 2002, the activities of the Conference of Delegates were assumed by an independently incorporated successor entity, the Conference of Delegates of California Bar Associations ("CDCBA"). An amendment to Cal. Bus. & Prof. Code §6031.5 allowed the collection of voluntary fees or donations to the CDCBA. In addition to these changes, in 2001, the Board of Governors provided members the option of an additional \$5 deduction from membership fees for certain other programs. Although reasonable persons may disagree whether some of these programs and activities may be chargeable under the criteria in *Keller*, the Board of Governors has elected to make them optional in their entirety.

Commencing January 1, 2000, the amount of expenses that the State Bar could incur for legislative activity outside of the parameters of *Keller* was restricted by statute to the total revenue collected from those members electing to pay the \$5 deduction under Cal. Bus. & Prof. Code §6140.05. Instead of categorizing its programs as within or outside of *Keller*, the State Bar has elected to restrict the expenses of all of its legislative activity to voluntary funds and continues to do so today. Similarly, the funding of certain other programs is now limited to voluntary fees. Accordingly, all such expenses will be funded by restricted funds composed of voluntary fees, paid at the option of members. Members who do not wish to support these activities may deduct the amounts from their annual membership fees. As a result, no mandatory fees are used to fund nonchargeable expenses. Therefore, for purposes of the Statement, there

are no nonchargeable expenses for mandatory membership fees for the year ended December 31, 2004.

The following is a listing of the major expenses that the State Bar has categorized as chargeable, including a description of the programs or activities performed by category. The classification of a program or expense as chargeable was based on the standards in *Keller* that have been applied to determine whether an expense was necessarily or reasonably incurred for the purpose of regulating the legal profession or improving the quality of legal services available to the people of the State of California. Nonchargeable expenses, as stated above, were funded by voluntary fees paid at the option of members. Determining which State Bar programs and activities are chargeable and nonchargeable requires that judgments be made by the State Bar.

Description of Categories — Chargeable Programs

Discipline — The purpose of the Discipline program is to protect the public by regulating the conduct of California lawyers.

a. **Enforcement** \$ 30,273,425

Receive, review and analyze incoming communications which relate to disciplinary inquiries and complaints against attorneys. Investigate allegations of unethical and unprofessional conduct against attorneys who may have violated provisions of the State Bar Act, Rules of Professional Conduct or other standards of professional conduct. Prosecute attorneys in formal disciplinary hearings in the State Bar Court for violations of the State Bar Act or Rules of Professional Conduct. Activities include, as appropriate, the preparation of formal disciplinary pleadings, conduct of formal and informal discovery, and representation of the State Bar as Trial Examiners in the actual hearings and subsequent review proceedings. (Bus. & Prof. Code §§6043, 6044, 6049, 6077, 6078, 6092.5 et seq.)

b. **State Bar Court** \$ 7,112,605

Adjudicate formal disciplinary matters resulting in the final imposition of discipline or, in certain instances involving suspension or disbarment, the recommendation of discipline to the California Supreme Court. (Bus. & Prof. Code §§6086.5, 6086.6; Cal. Rules of Court, rules 952, 953, 954.)

c. **Client Security Fund** \$ 6,990,609

Receive, evaluate and process applications made to the Fund by persons who have suffered monetary losses due to dishonest conduct of lawyers and authorize recovery to eligible clients out of funds collected for this purpose. (Bus. & Prof. Code §6140.5.)

d. **Fee Arbitration** \$ 620,033

Administer a statewide program for arbitrating fee and cost disputes, and arbitrate those disputes that are not within the jurisdiction of an approved local bar association program. (Bus. & Prof. Code §6200.)

\$ 44,996,672

Administration of Justice — The purposes of the Administration of Justice program are: (1) to administer the work of the Commission on Judicial Nominees Evaluation ("JNE") as mandated by Government Code §12011.5; (2) to improve the quality and delivery of legal services available to the people of the State; and (3) to aid in the advancement of the science of jurisprudence and improvement of the administration of justice. This program provides specialized professional advice, analysis, studies and information to the judicial, legislative and executive branches of government. Except JNE, the State Bar has elected to fund its other administration of justice activities with the voluntary legislative activities fund or other voluntary fees.

a. **Commission on Judicial Nominees Evaluation** \$ 458,454

Evaluate and report to the Governor's Office on the qualifications of judicial candidates whose names have been submitted by the Governor. (Gov. Code §12011.5.)

Lawyer Assistance Program — The purpose of the \$ 1,404,163

Lawyer Assistance Program is to provide an alternative to the traditional State Bar disciplinary mechanism, with the goal of the program being the identification and rehabilitation of attorneys with impairment due to abuse of drugs or alcohol, or due to mental illness.

a. **Lawyer Assistance**

Oversee the operation of the Lawyer Assistance Program and adopt reasonable rules and regulations as may be necessary or advisable for the purpose of implementing and operating the Program. (Bus. & Prof. Code §6231.)

Competence — The purposes of the Competence program are (1) to provide and promote statewide competence education and (2) to assist others in providing statewide competence education programs.

a. **Professional Competence, Planning and Development** \$ 1,935,308

Maintain and improve the standards of the legal profession to enhance attorney competence through: (1) promulgating and strengthening professional standards to protect the public; (2) assisting members to comply voluntarily with such standards (e.g., Ethics Hotline, California Compendium on Professional Responsibility, Lawyer Assistance Program); and (3) planning and development of programs to enhance attorney competence. (Bus. & Prof. Code §§6076, 6077.)

Program Development — The purpose of the Program Development program is to provide assistance in the delivery of civil legal services to the public, by working with legal services providers and bar associations to provide a variety of public service programs, including: pro bono legal services programs, lawyer referral services, pro per clinics, community-based resolution centers and programs to improve access to the courts. The program also provides limited staff support to the California Young Lawyers Association and to the Standing Committee on Delivery of Legal Services.

a. **Legal Services Access** \$ 1,110,102

Provide technical assistance and support to bar associations and legal services programs to develop or expand the availability of legal services to low- and middle-income people in the State. Program development activity focuses on promoting pro bono public efforts, lawyer referral services ("LRS") and dispute resolution programs.

b. **California Young Lawyers Association** \$ 46,276

Foster a greater understanding of, and encourage interest among, recently admitted and young lawyers in the programs and activities of the State Bar. Provide a forum for the exchange of ideas in order to assist the State Bar in its programs. (Bus. & Prof. Code §§6013, 6013.4.)

\$ 1,156,378

Allocated Administrative Overhead — General and administrative expenses are incurred to provide staff and operational support to all programs and activities of the State Bar in the following areas: human resources; finance; financial planning and analysis; data processing operations and development; printing; word processing; purchasing; membership records and certification; member billing and elections; building management; law library and archives; mail; legal counsel and advice; and the formulation, implementation and administration of policies through the Board of Governors and Executive Offices. The "overhead/interfund allocation/intrafund allocation" is the share of the administrative costs that are charged to the restricted fund programs for the support provided, using the methodology of the State of California for apportioning and recouping administrative support cost provided by the State's general fund to its special fund programs.

General and administrative expenses are allocated based upon the ratio of the program's expenditures to total program expenditures paid by mandatory dues.

Communications	\$ 2,600,061
Executive Offices	\$ 3,747,592
General Counsel	\$ 2,857,437
Office of Finance	\$ 3,120,291
Office of Human Resources	\$ 1,254,987
Office of Administrative Support — Los Angeles	\$ 1,179,633
Office of Support Services — San Francisco	\$ 1,002,803
Member Records	\$ 470,496
Information Technology	\$ 4,281,462
Office of Real Property (includes lease space cost)	\$ 1,768,479
Overhead/interfund allocation/intrafund allocation	\$(15,260,031)
Building Fund	\$ 1,962,680

Total \$ 8,985,890

3. OPTIONAL DEDUCTIONS

The State Bar has determined that an amount up to \$10 may be deducted from the membership fees. This amount includes the \$5 set by the California Legislature for legislative and related activities and \$5 fixed by the Board of Governors of the State Bar for the optional programs.

The deduction is allocated to the following activities:

a. Lobbying

Members may deduct the \$5 from the annual membership fee which would otherwise fund legislative proposals that improve the administration of justice but are outside the parameters of *Keller*. Legislative activity by the State Bar is limited by statute to the amount paid by members who elect not to take the deduction. (Bus. & Prof. Code §6140.05.)

b. Other Optional Programs

Members may deduct the remaining \$5 from the annual membership fee which would otherwise fund the elimination of bias and bar relations programs to eliminate bias in the judicial system and legal profession and to increase participation of attorneys who have been underrepresented in the administration and government of the State Bar's programs and activities, such as women, ethnic minority, gay, lesbian and disabled attorneys, and will not fund the cost of communicating and maintaining relations with local bars and other voluntary associations.