



*Statement of Expenditures of  
Mandatory Fees and  
Report of Independent Accountants*

**The State Bar of California**

*Year Ended December 31, 2017*

## Report of Independent Accountants

To the Boards of Trustees  
The State Bar of California

We have examined The State Bar of California's Statement of Expenditures of Mandatory Fees (the "Statement") for the year ended December 31, 2017 and The State Bar of California's compliance with the United States Supreme Court's decision in *Keller v. State Bar of California* (1990) 496 U.S. 1, which held that The State Bar of California cannot use mandatory fees paid by its licensees for political or ideological activities not related to regulation of the legal profession or improvement of quality of legal services in California.

The Statement is the responsibility of The State Bar of California's management. Our responsibility is to express an opinion based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and, accordingly, included examining, on a test basis, evidence supporting the Statement and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion. However, our audit does not provide a legal determination of The State Bar of California's compliance.

In our opinion, the Statement presents, in all material respects, chargeable program expenditures of The State Bar of California for the year ended December 31, 2017, and The State Bar of California complied with the United States Supreme Court's decision in *Keller v. State Bar of California* (1990) 496 U.S. 1, which held that The State Bar of California cannot use mandatory fees paid by its licensees for political or ideological activities not related to regulation of the legal profession or improvement of quality of legal services in California, based on the criteria set forth in the note to the Statement.

This report is intended solely for the information and use of the Boards of Trustees and Management of The State Bar of California, and it is not intended to be, and should not be, used by anyone other than these specified parties.

*Moss Adams LLP*

San Francisco, California  
April 27, 2018

**THE STATE BAR OF CALIFORNIA  
STATEMENT OF EXPENDITURES OF MANDATORY FEES  
YEAR ENDED DECEMBER 31, 2017**

	<u>Dollar Amount</u>	<u>Percentage of Total Program Expenses</u>
CHARGEABLE EXPENSES AND RELATED PROGRAM REVENUES:		
Chief Trial Counsel	\$ 40,931,692	57.13%
State Bar Court	12,175,547	16.99%
Member Records and Compliance	4,327,641	6.04%
Professional Competence	2,428,803	3.39%
Probation	1,318,111	1.84%
Mandatory Fee Arbitration	647,350	0.90%
Judicial Evaluation	676,955	0.94%
Commission on Access to Justice	14,651	0.02%
Center on Access to Justice	1,557,378	2.17%
California Young Lawyers Association	28,107	0.04%
Lawyer Assistance Program	1,073,543	1.50%
Client Security Fund	7,882,428	11.00%
Communication	1,513,551	2.11%
Program Revenues	<u>(2,914,690)</u>	<u>-4.07%</u>
Total Chargeable Program Expenses	<u>\$ 71,661,067</u>	<u>100.0%</u>

**THE STATE BAR OF CALIFORNIA  
NOTES TO THE STATEMENT OF EXPENDITURES OF  
MANDATORY FEES  
YEAR ENDED DECEMBER 31, 2017**

**1. SIGNIFICANT ACCOUNTING POLICIES**

*Description of Entity* – The State Bar of California (“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. A licensee from the State Bar and payment of an annual fees 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 accrual basis of accounting using 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. Amounts in the Statement of Expenditures of Mandatory Fees (“Statement”) were derived from the State Bar’s audited 2017 financial statements.

*Use of Estimates* – The preparation of the Statement requires management to make estimates and assumptions related to the amounts of chargeable expenditures during year. Actual results could differ from those estimates.

**2. BASIS OF PRESENTATION**

The accompanying Statement was prepared for the purpose of showing the allocation of certain expenditures into chargeable and non-chargeable categories. Although derived from the State Bar’s audited 2017 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. Amounts reported in the Statement can be agreed to amounts reported in the State Bar’s financial statements.

The State Bar Act sets the amount of the annual fees that the State Bar may charge lawyers for the license to practice law in California. The amount of the annual 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 require California lawyers to pay, as mandatory fees, the expense of the State Bar’s 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 a basis of determination for the mandatory fees that each licensee must pay in order to practice law in California. It describes and separates programs and activities that are “chargeable” and “non-chargeable” to licensees under the *Keller* standard. In calculating the chargeable and non-chargeable expenditures, absolute precision is not expected nor required pursuant to *Keller*. Expenditures included in the Statement are derived from expenses included in the General Fund (except program costs funded by filing fees or other fees), Client Security Fund, the Lawyers Assistance Program Fund, and the Support and Administration Fund of the State Bar.

Since January 1, 2000, amendments to the State Bar Act have provided each licensee with the option of deducting \$5 from the annual licensing fee for lobbying and related activities outside of the parameters established in *Keller* (Cal. Bus. & Prof. Code §6140.05). In addition to these changes, in 2001, the Board of Trustees provided licensees the option of an additional \$5 deduction from annual 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 Trustees has elected to make them optional in their entirety.

**THE STATE BAR OF CALIFORNIA  
NOTES TO THE STATEMENT OF EXPENDITURES OF  
MANDATORY FEES  
YEAR ENDED DECEMBER 31, 2017**

**2. BASIS OF PRESENTATION (CONTINUED)**

Since January 1, 2000, the amount of expenses that the State Bar may incur for legislative activity outside of the parameters of *Keller* was restricted by statute to the total revenue collected from those licensees electing to pay the \$5 and not take the deduction from the annual fee 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. Similarly, the State Bar has a \$5 deduction for activities under the State Bar's Bar Relations and Elimination of Bias program and limited its funding to voluntary fees paid by licensees not taking this deduction. Licensees who do not wish to support either the State Bar's Legislative Activities or its Bar Relations and Elimination of Bias program can deduct the amounts from their annual fees. As a result, no part of the mandatory annual fees that a lawyer must pay as a condition of practicing law are used to fund non-chargeable expenses. Therefore, for purposes of the Statement, there are no non-chargeable expenditures for mandatory licensing fees for the year ended December 31, 2017.

**3. DESCRIPTION OF CHARGEABLE PROGRAMS**

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 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. Non-chargeable expenditures, as stated above, were funded by voluntary fees paid at the option of licensees. Determining which State Bar programs and activities are chargeable and non-chargeable requires that judgments be made by the State Bar.

a. *Chief Trial Counsel*

The Office of the Chief Trial Counsel receives, reviews, and analyzes incoming communications which relate to disciplinary inquiries and complaints against attorneys. It investigates 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*

The State Bar Court adjudicates 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, 6086.65; Cal. Rules of Court, rules 9.13, 9.16, 9.18)

c. *Members Records and Compliance*

The Office of Attorney Regulations and Consumer Resources maintains the Court's roll of attorneys admitted to the practice of law by the court. It also bills and collects fees, costs, and penalties imposed on licensed attorneys, including reimbursements to the Client Security Fund and disciplinary costs. It also keeps track of all licensees of the Bar, including any record of discipline, and answers inquiries from courts, other governmental agencies, other states, and the public.

**THE STATE BAR OF CALIFORNIA  
NOTES TO THE STATEMENT OF EXPENDITURES OF  
MANDATORY FEES  
YEAR ENDED DECEMBER 31, 2017**

**3. DESCRIPTION OF CHARGEABLE PROGRAMS (CONTINUED)**

d. *Professional Competence*

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

e. *Probation*

The Office of Probation (“OP”) monitors disciplined attorneys who have been ordered to comply with probation or reprobation conditions pursuant to orders issued by the California Supreme Court and/or the State Bar Court. The OP also monitors cases where conditions have been imposed pursuant to Business and Professions Code, section 6007(h). Once these orders or agreements become effective, the OP establishes its own case files to maintain a record of compliance or non-compliance for each attorney.

OP staff monitor participating attorneys’ compliance. The monitoring requires OP staff to contact the attorney being monitored and third-parties such as former clients, service providers, and other departments of the State Bar. OP staff provides timely information to the attorney, Office of Chief Trial Counsel, and State Bar Court regarding non-compliance and are available to testify regarding such under oath in court.

f. *Mandatory Fee Arbitration*

The Fee Arbitration Program (Business and Prof. Code § 6200 et seq.) provides for resolution of fee disputes between attorneys and clients. It is mandatory for the lawyer if the client requests arbitration. Most complaints come to the program independently of the Office of Trial Counsel's Intake Unit, and the availability of this service almost certainly prevents the filing of additional disciplinary complaints. Maintaining a program that decreases the number of additional complaints assists the disciplinary system in processing those cases that cannot otherwise be handled. Although it may be argued that the arbitration program is not necessarily an indispensable part of an attorney disciplinary process, the court held it is a valuable and justifiable component of a comprehensive disciplinary system. (Id., at 622.)

g. *Judicial Evaluation*

The Commission on Judicial Nominees Evaluation, established pursuant to Government Code section 12011.5, is the State Bar agency which evaluates all candidates who are under consideration for a judicial appointment by the Governor. The mission of the Commission is to assist the Governor in the judicial selection process and thereby to promote a California judiciary of quality and integrity by providing independent, comprehensive, accurate, and fair evaluations of candidates for judicial appointment and nomination.

As stated in *Hoffman v. State Bar of California* (2003) 113 Cal.App.4th 630, 635, the State Bar has the “constitutional responsibility, along with the Chief Justice of the Supreme Court and the houses of the Legislature, to appoint a specified number of licensees to the Judicial Council. (Cal. Const., art. VI, § 6.) Through the appropriate committee, the association is also required by statute to evaluate potential appointees for judicial office and report its recommendation to the Governor. (Gov.Code, § 12011.5, subs.(a), (c).) No candidate may be appointed until the State Bar has so reported, or the time for reporting has elapsed. (Id. at subd. (k).)” Having a strong judiciary evaluation system promotes public protection by helping ensure a fair legal system.

**THE STATE BAR OF CALIFORNIA  
NOTES TO THE STATEMENT OF EXPENDITURES OF  
MANDATORY FEES  
YEAR ENDED DECEMBER 31, 2017**

**3. DESCRIPTION OF CHARGEABLE PROGRAMS (CONTINUED)**

h. *Commission on Access to Justice*

The California Commission on Access to Justice was established in 1997 to pursue long-term fundamental improvements in our civil justice system so that it is truly accessible for all, regardless of income, geography, language ability, or other factors. The commission is comprised of members from all three branches of government, as well as business, labor, academic, religious and civic organizations.

The 26-member commission of lawyers and judges, as well as academic, business, labor, and community leaders, was established to explore ways to improve access to civil justice for Californians living on low and moderate incomes. The commission was instrumental in establishing the \$10 million Equal Access Fund for civil legal services to the indigent and works closely with the Judicial Council to improve access to the courts.

The improvement of the administration of justice and the public's access to justice falls within the exclusive preserve of the judicial branch. (See *Superior Court v. Mendocino* (1996) 13 Cal.4th 45.) Further, this program improves the quality of legal services available to the people of California. (See *Keller*, supra, 497 U.S. at 14.)

i. *Center on Access to Justice*

This program addresses the development of policy and initiatives in collaboration with other institutions working to expand access to justice for low income Californians (e.g. Judicial Council; legal services entities; local, state and national organizations such as the American Bar Association and National Legal Aid and Defender Association).

Programs that affect the public's access to justice fall within the exclusive preserve of the judicial branch. (See *Superior Court v. Mendocino* (1996) 13 Cal.4th 45.)

j. *California Young Lawyers Association*

California Young Lawyers Association ("CYLA") is the nation's largest association of young lawyers. This program encompasses legal training and education, and involvement in the practice of law, all areas over which this court has inherent authority. (In re Attorney Discipline System, supra, 19 Cal.4th 582, 592 and *Warden v. State Bar* (1999) 21 Cal.4th 628, 653 [dissent opn. Kennard, J.].) This program also improves the quality of legal services available to the people of California. (See *Keller*, supra, 497 U.S. at 14.) Additionally, CYLA provides pro bono opportunities. Pro bono work is expected of attorneys. (See Bus. & Prof. Code, § 6073 and In re Glass (2014) 58 Cal.4th 500, 526.) Therefore, CYLA falls within the regulatory activities of the judiciary.

k. *Lawyer Assistance Program*

The Lawyer Assistance Program provides 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. The Office of the Lawyer Assistance Program adopts reasonable rules and regulations as may be necessary or advisable for the purpose of implementing and operating the Lawyer Assistance program. (Bus. & Prof. Code §6231.)

**THE STATE BAR OF CALIFORNIA  
NOTES TO THE STATEMENT OF EXPENDITURES OF  
MANDATORY FEES  
YEAR ENDED DECEMBER 31, 2017**

**3. DESCRIPTION OF CHARGEABLE PROGRAMS (CONTINUED)**

l. *Client Security Fund*

The Client Security Fund receives, evaluates, and processes applications made by persons who have suffered monetary losses due to dishonest conduct of lawyers, and authorizes recovery to eligible clients out of funds collected for this purpose. (Bus. & Prof. Code §6140.5.)

m. *Communications*

The State Bar's Office of Communications and Stakeholder Engagement is responsible for ensuring that the general public and the legal community are informed about the State Bar's public protection role and know how to access the Bar's services and resources. The Office is tasked with conveying critical information to Californians about how to protect themselves from attorney misconduct and what to do if that happens, including by filing complaints against attorneys or seeking compensation for harm through the Client Security Fund. A major emphasis is on activities that reach the public in California to ensure they know how to access the resources of the State Bar's attorney discipline system, as well as to help attorneys understand their ethical obligations.

The Office of Communications and Stakeholder Engagement provides important updates for attorneys licensed in California regarding rules and ethics guiding the profession, as well as ongoing education to improve competence. This office provides information about how to find a lawyer and information about access to legal services for low-income Californians.

n. *General Fund Allocated Support Service*

General and administrative expenses are incurred to provide staff and operational support to all programs and activities of the State Bar including, but not limited to: human resources; finance; licensee billing; information technology; procurement; building maintenance; general services; legal counsel; the formulation, implementation, and administration of policies through the Board of Trustees and the Office of the Executive Director. The "Indirect Costs/Overhead 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.

**THE STATE BAR OF CALIFORNIA  
NOTES TO THE STATEMENT OF EXPENDITURES OF  
MANDATORY FEES  
YEAR ENDED DECEMBER 31, 2017**

**3. DESCRIPTION OF CHARGEABLE PROGRAMS (CONTINUED)**

The 2017 State Bar of California indirect cost allocation to chargeable programs is summarized below:

General Counsel	\$ 4,408,118
Finance	2,666,049
Licensee Billing	1,383,824
Human Resources	1,779,382
General Services - Los Angeles	4,649,033
General Services - San Francisco	5,438,194
Building Improvement	1,235,400
Information Technology	6,448,838
Oracle ERP Upgrade	700,000
Governance*	3,468,932
Other - Non Departmental**	551,596
Indirect Cost Pool	<u>32,729,366</u>
Overhead Allocation to Other Programs	<u>(10,339,226)</u>
 Overhead Allocation to Chargeable Program	 <u><u>\$ 22,390,140</u></u>

*\*Governance includes Board of Trustees, Appointments, Office of Executive Director, Elections, Public Interest Task Force, Class and Comp WF Planning, ORIA*

*\*\*Other - Non Departmental costs include staff retirement benefit costs and chargebacks*

The amount of the Overhead Allocation to Chargeable Programs is included in the various Chargeable Program expenditures on the statement.

*o. Program Revenues*

Program revenues related to chargeable expenses from the General Fund, Building Fund, Client Security Fund, Lawyers Assistance Fund, and the Support and Administration Fund of the State Bar are held to fund the related program expenses. Program revenues for 2017 are comprised of:

Law Corporation Registration Fees	\$ 1,541,653
Continuing Legal Education Fees	727,478
Seminar/Workshop Revenue	26,508
Grant Revenue	50,000
Other	569,051
Total	<u><u>\$ 2,914,690</u></u>

**THE STATE BAR OF CALIFORNIA  
NOTES TO THE STATEMENT OF EXPENDITURES OF  
MANDATORY FEES  
YEAR ENDED DECEMBER 31, 2017**

**4. OPTIONAL DEDUCTIONS**

The State Bar sets an amount that licensees are not required to pay and may deduct from the annual licensing fees. In 2017, these deductions were \$40 for active attorneys, and an amount up to \$45 for inactive attorneys. In 2017, there was no fee bill. Under the interim special regulatory assessment ordered by the Supreme Court of California, this amount included \$5 fixed by the court for legislative and related activities for inactive attorneys only; and \$40 set by the court for the Temporary Emergency Legal Services Voluntary Assistance Option for both active and inactive attorneys. Funding for elimination of bias as part of licensing fees was suspended under the assessment. These deductions are allowed for the following activities:

a. *Lobbying*

Inactive licensees may deduct the \$5 from the annual fee which would otherwise fund the State Bar's consideration of legislative measures (including proposals that improve the administration of justice, that may be outside the parameters of *Keller*) and related activities. All legislative activity by the State Bar is limited by statute and by action of its Board of Trustees to the amount paid by inactive licensees who elect not to take the deduction. (Bus. & Prof. Code §6140.05.)

In 2018, under the new fee bill, the \$5 deduction was reinstated to include both active and inactive attorneys.

b. *Elimination of Bias*

Funding for elimination of bias as part of licensing fees was suspended under the assessment in 2017 for both active and inactive attorneys. In the prior year, licensees could deduct \$5 from the annual fee which would otherwise fund the elimination of bias program 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. In 2018, under the new fee bill, the deduction was reinstated for both active and inactive attorneys at a reduced level of \$2. The reduction reflects the closing of the Bar Relations program.

c. *Legal Services Voluntary Assistance Option*

In 2017, licensees were allowed to deduct \$40 from the annual licensing fee, which would otherwise fund the Legal Service Trust Fund Program to support nonprofit organizations that provide free civil legal services to low-income Californians. (Bus. & Prof. Code §6140.03.)

