AGENDA ITEM

JULY 143

Statement of Expenditures of Mandatory Membership Fees for Year Ended December 31, 2006 and Independent Auditor's Report

DATE: June 29, 2007

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

FROM: Peggy Van Horn, Chief Financial Officer

SUBJECT: Audited Statement of Expenditures of Mandatory Membership Fees for the Year Ended December 31, 2006, and Independent Auditor's Report

---

Executive Summary

To comply with the constitutional requirements for collection of mandatory membership fees under *Keller v. the State Bar of California*, 496 U.S. 1 (1990), the State Bar must prepare each year an audited statement of its major categories of expenses showing that no mandatory bar dues were used for political or ideological activities not "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." For the 2008 membership fees, staff has prepared a Statement of Expenditures of Mandatory Membership Fees based on the recently completed audit of the State Bar's 2006 financial statement. The accounting firm of Deloitte & Touche has audited that Statement of Expenditures of Mandatory Membership Fees and prepared its Independent Auditor's Report. After its receipt by the Board of Governors and later in the year when the annual billing statements are mailed to members, the audited statement and the auditor's report will be published by posting on the State Bar's Web site with notice in the December issue of the *California Bar Journal*.

Recommendation

Staff recommends that the Board receive the audited Statement of Expenditures of Mandatory Membership Fees for the year ending December 31, 2006, and Independent Auditor's Report, copies of which are attached. It is further recommended that the Board authorize its publication when the annual billing statements are mailed to members by the posting of the statement and report on the State Bar's Web site together with notice of the posting in the December issue of the California Bar Journal.

Discussion

Background

State law requires members of the State Bar to pay an annual membership fee as a condition to the practice of law. Cal. Bus. & Prof. Code § 6143. In *Keller v. State Bar of California*, 496 U.S. 1, 14 (1990), the United States Supreme Court held that the First Amendment prohibits the State Bar from compelling its members to pay for any political or ideological bar activities that are not necessarily or reasonably related to regulating the legal profession or improving the quality of legal services available to the people of the state. To comply with this constitutional requirement, the State Bar provides each member the option to deduct from the annual membership fee the amounts that would be used to support the nonchargeable activities outside of *Keller* purview.

Since 1991, the Board has directed that the State Bar has provided for a deduction to the annual membership fee, varying between one and five dollars, for legislative activities of the Conference of Delegates, Bar Sections, the Office of Governmental Affairs, and other activities deemed outside of *Keller*. In 2000, the California Legislature preempted the Board and imposed a $5 deduction for legislative and related activities of the State Bar outside of the parameters of *Keller*. Cal. Bus. & Prof. Code § 6140.05. The Legislature further restricted the amount that the State Bar could budget, collect and expend on such legislative activity to the sum paid voluntarily by members electing not to take the $5 deduction. In addition, the Legislature prohibiting use of mandatory dues to fund any of the activities of the Conference or Bar Sections, which must be funded separately by their own respective voluntary fees or donations. Cal. Bus. & Prof. Code § 6031.5. (In 2002, the functions of the Conference were passed on to the newly created Conference of Delegates of California Bar Associations, an organization wholly independent of the State Bar.) Following the Legislature's example, the Board adopted a similar procedure in response to the 1999 trial court judgment in *Brosterhous v. State Bar of California*, which held that certain other bar activities were outside of *Keller*. These activities included those related to eliminating bias in the legal profession provided by the State Bar's standing committees, such as the Ethnic Minority Relations Committee, Committee on Women in the Law, Committee on Sexual Orientation Discrimination, and the Committee on Legal Professionals with Disabilities; the bar leaders conference and mid-year meeting, various services to local bars, and other activities to maintain relations with other bar associations. To comply with the judgment, the Board has provided a deduction for the bar relations and elimination of bias activities and has limited funding to the voluntary fee paid by members not taking the deduction or other voluntary sources.

In addition to the deduction, the State Bar prepares a Statement of Expenditures of Mandatory Membership Fees (formerly "Statement of Chargeable and Nonchargeable Expenses"). *See Keller*, 496 U.S. at 17 *citing Chicago Teachers v. Hudson*, 475 U.S. 292 (1986).

The purpose of the Statement of Expenditures of Mandatory Membership Fees is to provide an explanation of the mandatory membership fees that each bar member must pay under state law in order to practice law in California. It describes and separates expenditures of mandatory membership fees by program into "chargeable" and "nonchargeable" categories. Because of the deductions available to members for programs categorized as "nonchargeable" and the State Bar's policy to fund these programs only with revenues received from members electing not to take the deductions, there are no nonchargeable expenditures of mandatory dues listed in the statement. The statement is prepared from the State Bar's most recently completed audited financial statement and shows the major categories of expenses with a brief description of each category so that each bar member may gauge whether the expense is justified under the *Keller* standard. *See*, *Keller*, 496 U.S. at 17; *Chicago Teachers v. Hudson*, 475 U.S. at 307 n. 18.[1] An independent auditor must then verify the Statement of Expenditures of Mandatory Membership Fees. The Statement of Expenditures of Mandatory Membership Fees is then published by posting on the State Bar's Web site at www.calbar.ca.gov and notice in the December issue of the *California Bar Journal* that is mailed to all members.

To explain the basis for the 2008 membership fee, staff has prepared a Statement of Expenditures of Mandatory Membership Fees using the recently completed audited financial statement for the period ending December 31, 2006.[2] The accounting firm of Deloitte & Touche has audited the 2006 Statement of Expenditures of Mandatory Membership Fees and prepared its Independent Auditor's Report.

Statement of Expenditures of Mandatory Membership Fees

The following is a brief summary of the expenses included in the Statement of Expenditures of Mandatory Membership Fees.

Chargeable expenses: (1) *Discipline* includes the expenses of the Office of the Chief Trial Counsel, the State Bar Court, Client Security Fund; Fee Arbitration; (2) *Administration of Justice* includes only the cost of the Judicial Nominees Evaluation Commission; (3) *Administration of the Profession* includes the expense of membership

[1] A member may dispute the State Bar's determination that the expense may be charged to the member as part the mandatory bar dues and have the challenge heard by an independent decision-maker. Rules of State Bar, tit. 2, div. 1, § 2.17 (formerly Rules Regs State Bar art. IA, § 3); *see*, *Chicago Teachers v. Hudson*, 475 U.S. at 307.
[2] The statement was prepared with the assumption that the State Bar will continue to use only voluntary fees paid by members not taking the deduction for bar relations and elimination of bias activities to fund those activities.

billing and records; member services; and the Multi-Jurisdiction Practice program (4) *Lawyer Assistance* includes cost of the Lawyer Assistance Program required under Business and Professions Code section 6231; (5) *Competence* refers to Professional Competence, Planning and Development program (including the Ethics Hotline, the Committee on Professional Responsibility and Competence, publication of the Compendium on Professional Responsibility); (6) *Program Development* includes Legal Services Access; California Young Lawyers Association; and (7) Allocated Administrative Overhead (e.g., human resources, finance and financial planning, information technology and services, printing, mail, legal counsel, executive offices, and the Board of Governors).

Non-chargeable expenses: The State Bar has elected to treat as nonchargeable activities all its legislative and related activities. As directed by the Board, expenditures on legislative activities are limited to those member fees paid voluntarily by members not taking the $5 deduction under Cal. Bus. & Prof. Code § 6140.05. (Legislative activities of State Bar Sections are paid for separately by voluntary section dues.) Similarly, program activities in the area of bar relations and elimination of bias in the legal profession will be voluntary and the amount of expenditures limited to the amount collected from those members electing not to take the $5 deduction that is offered. Because these expenses are restricted to voluntary fees, there were no nonchargeable expenses charged to mandatory bar dues in 2006.

Proposed Resolutions

Board Committee on Planning, Program Development and Budget

RESOLVED that the Board Committee on Planning, Program Development and Budget recommends that Board of Governors receive the audited Statement of Expenditures of Mandatory Membership Fees for the year ended December 31, 2006, and the accompanying Report of the Independent Auditor, copies of which are attached hereto, and direct staff to publish the Statement and Report when the billing of 2008 membership fees is mailed to members by posting the Statement and Report on the State Bar Web site with notice in the December 2007 issue of the California Bar Journal.

Board of Governors

RESOLVED that upon recommendation of the Board Committee on Planning, Program Development and Budget, the Board of Governors hereby receives the audited Statement of Expenditures of Mandatory Membership Fees for the year ended December 31, 2006, and the accompanying Report of the Independent Auditor, copies of which is attached hereto, and directs staff to publish the Statement and Report when the billing of 2008 membership fees is mailed to members by posting the Statement and Report on the State Bar Web site with notice in the December 2007 issue of the California Bar Journal.