AGENDA ITEM

JULY142
2008 Membership Fees, Fee Scaling and Due Dates, Penalties on Delinquent Fees and Date for Attachment of Penalties, Discipline Costs, Client Security Fund Reimbursements, Interest and Other Fees.

DATE: July 20, 2007

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

FROM: Peggy Van Horn, Chief Financial Officer
Ray Farrish, Finance Manager, Member Billing

SUBJECT: 2008 Membership Fees, Fee Scaling and Due Date, Penalties on Delinquent Fees and Date for Attachment of Penalties, Discipline Costs, Client Security Fund Reimbursements, and Interest and Other Fees.

Executive Summary

Each year the Board of Governors must approve the annual membership fees to be paid by members of the State Bar as well as the fee scaling level, the amount of penalties or interest for delinquent membership fees, and the interest rate for Client Security Fund reimbursements. The Board must also authorize the date for the attachment of such penalties and interest. For 2008, staff is proposing that the Board adopt the maximum active and inactive fees allowed under SB 686 and other fees and charges as set forth in the Schedule of Charges and Deadlines. (Attachment 1.)

BACKGROUND

Existing law authorizes the collection of annual State Bar membership fees. The amount of annual membership fees is established by the legislature as set forth in the State Bar Act. (Bus. & Prof. Code § 6140 et seq.)

Under the provisions of SB 686[1], membership fees for 2008 may not exceed $400 for active members and $125 for inactive members. The State Bar's 2008 proposed budget and financial forecasts are based on these fee levels.

This agenda item requests that the Board set fees, costs, and penalties for 2008, as described below and listed in the Schedule of Charges and Deadlines at Attachment 1.

Annual Membership Fees

The fees recommended for 2008 are allocated to the State Bar's various funds as follows:

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[1] This bill is pending in the Legislature. If adopted in its current form, the $10 building fee is eliminated and a three-year special information technology fee of $10 is established.

	General Fund	Information Technology Special Assessment	Client Security Fund	Lawyer Assistance Program	Total
Active	$340	$10	$40	$10	$400
Inactive	$100	$10	$10	$ 5	$125

$10 *Keller* Deductions

Keller v. State Bar of California, 496 U.S. 1 (1990), prohibits the State Bar from charging as part of mandatory bar dues the expenses of any political or ideological activities not reasonably related to regulating the legal profession or improving the quality of legal services in California. Since 2000, the Board has provided a total deduction of $10 that a member of the State Bar may deduct from the annual membership fee for purposes of *Keller*. This deduction includes: (1) $5 for State Bar lobbying and related activities (*see* Cal. Bus. & Prof. Code § 6140.05) and (2) $5 for the State Bar's Bar Relations and Elimination of Bias programs. Board policy limits the total amount that the State Bar may expend in either area to the voluntary fees paid by those members electing not to take the deductions.

Scaling of Membership Fees

An active member who has a total gross annual individual income from all sources of less than $40,000 may request to scale or reduce annual membership fees by 25%. (Bus. & Prof. Code § 6141.1.) This criteria was established under legislation enacted in 2005 (AB 1529) and will remain unchanged for 2008.

Late Payment Penalties

Business and Professions Code section 6143 authorizes the Board to impose penalties on any member, active or inactive, for failing to pay any fees, penalties or costs after they become due. Pursuant to this statutory authority, the Board has the discretion to impose penalties for late payment of: (1) annual membership fees; (2) disciplinary costs assessed against a publicly reproved or suspended member pursuant to Business and Professions Code section 6086.10; and (3) costs assessed for reimbursement to the Client Security Fund (CSF) pursuant to Business and Professions Code section 6140.5(c). However, since the disciplinary costs and CSF costs become part of the annual membership fees the year following their imposition, the Board has elected to only impose penalties for late payment of annual membership fees.

Title 2, Rule 2.13 of the Rules of the State Bar provides that "Late payment of annual membership fees is subject to the penalties set forth in the Schedule of Charges and Deadlines." (Attachment 1.) Title 2, Rule 2.33(C) further imposes a reinstatement fee—in addition to accrued fees, penalties, and costs—that a suspended member must pay in order to terminate the suspension for nonpayment.

For 2008, staff recommends that one penalty be assessed on February 2nd (the statutory due date is February 1st) in the amount of $100 for active fees and $30 for inactive fees. This assessment shall also apply for all members, other than new admittees, who were billed on or after December 19, 2006 and have not paid their 2007 membership fees.

Fees and Late Payment Penalties for 2008 New Admittees

All new members when first admitted to the practice of law are enrolled as active members. (Bus. & Prof. Code § 6004; Rules of State Bar, Title 2, Rule 2.12.) Within 45 days of the invoice date from the State Bar, new admittees must pay initial active fees. For new admittees in 2008, Title 2, Rule 2.12 provides for the following initial membership fees: full annual fees ($400) if admitted between January 1 and May 31, 2008; one-half the annual fee ($200) if admitted between June 1 and November 30, 2008. Staff recommends that a late payment penalty for new admittees in 2008 be assessed as follows: $100 for those admitted on or before May 31, 2008, and $50 for those admitted on or after June 1, 2008.

Interest on Client Security Fund Reimbursements

Pursuant to Business and Professions Code section 6140.5 the Board is authorized to set an applicable interest rate for Client Security Fund (CSF) reimbursement costs. In the past, the Board has set this interest rate at 10% and CSF staff requests that the 10% annual interest rate be retained and calculated from the date of disbursement. The CSF reimbursement amount, plus any applicable interest rates and costs become part of the membership fee.

Administrative Penalty for Non-Compliance with Mandatory Fee Arbitration Awards

Business and Professions Code section 6203(d)(3) authorizes the Bar to impose an administrative penalty on an attorney who had failed to comply with a binding arbitration award, not to exceed 20% of the amount ordered refunded to the client or $1000, which ever is greater. The Board in its discretion may also require an attorney to pay the reasonable costs of the arbitration. The non-compliance penalty and costs become part of the membership fee for the next calendar year.

Timing of Non-Payment Suspension Process

For the 2008 billing year, staff recommends that the initial mailing be sent to members on November 15, 2007 and members who have not paid as of the statutory deadline of February 1st, be assessed one late payment penalty. A final delinquent notice will be mailed to all unpaid members on March 17th. The list of unpaid members will be submitted to the Board for approval to forward the names to the Supreme Court for suspension 60 days after the mailing of the final delinquent notice. By enforcing the statutory due date, the State Bar will be able to reduce the suspension process from eight months to seven months and will be able to eliminate one mailing.

FISCAL IMPACT

The 2008 proposed budget and financial forecasts are based on the assumption that active fees would be set at $400 (see footnote 2) and that the inactive fee would be set at $125. The plan takes into consideration the $5 lobbying deduction and the $5 elimination of bias deduction that are available to members.

BOARD BOOK/ADMINISTRATIVE MANUAL

This item has no impact on the Board Book/Administrative manual.

RECOMMENDATION

Staff recommends that 2008 annual membership fees be set at $400 for active members and $125 for inactive members, and the late payment penalties imposed on delinquent 2008 membership fees and delinquent 2007 membership fees of members who were billed on or after December 19, 2006, be assessed on February 2nd at $100 for active members and $30 for inactive members.

Staff further recommends that the annual interest rate for Client Security Fund reimbursements be set at 10% annually calculated from the date of disbursement, and that an administrative penalty not to exceed 20% of the amount ordered refunded to the client or $1000, which ever is greater, be imposed on an attorney who failed to comply with a binding arbitration award.

RESOLUTION

If the Board Committee on Planning, Program Development and Budget concurs with staff's recommendations, the following resolutions are suggested:

> **RESOLVED** that the Board Committee on Planning, Program Development and Budget hereby recommends that, subject to enactment of SB 686 and the amounts authorized therein effective January 1, 2008, the Board of Governors set the annual membership fee for active members in 2008 at $400 and the annual membership fee for inactive members at $125; and it is
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> **FURTHER RESOLVED** that the total Keller deduction for the 2008 annual membership fee be set at $10, which shall include $5 for legislative activities under Business and Professions Code section 6140.05 and $5 for activities in the Bar Relations and Elimination of Bias programs; and it is
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> **FURTHER RESOLVED** that the penalties imposed on delinquent 2008 annual membership fees be set at $100 for active members and $30 for inactive members; and it is
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> **FURTHER RESOLVED** that the penalties on delinquent 2007 annual membership fees for all members, other than new admittees, billed on or after December 19, 2006 be set at $100 for active members and $30 for inactive members; and it is
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> **FURTHER RESOLVED** that said penalties in the preceding paragraphs shall be assessed on February 2, 2008; and it is
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> **FURTHER RESOLVED** that the reinstatement penalties for members to terminate suspension for nonpayment of accrued fees, penalties, and costs be set at $100; and it is

FURTHER RESOLVED that the membership fees for new members admitted in 2008 be set as follows: fees of $400 for those admitted between January 1 and May 31 and $200 for those admitted between June 1 and November 30; and it is

FURTHER RESOLVED that late payment penalties for new members admitted in 2008 be assessed and set on the 46th day from the invoice date as follows: $100 for those admitted on or before May 31, 2008, and $50 for those admitted on or after June 1, 2008; and it is

FURTHER RESOLVED that the interest on assessed costs for reimbursement to the Client Security Fund be set at 10% annually calculated from the date of disbursement as set forth by the Board, pursuant to Business and Professions Code §6140.5(c); and it is

FURTHER RESOLVED that the administrative penalty on failure to comply with binding arbitration is charged at a fee not to exceed 20% of the amount ordered refunded to the client or $1,000 whichever is greater; and it is

FURTHER RESOLVED, that all payments submitted after the Board of Governors have recommended members' suspension for non-payment of fees must be made in cash, credit card or certified funds by cashier's check, money order, bank certified check, or wire transfer.

BOARD RESOLUTION

Should the Board of Governors concur with the recommendation of the Board Committee on Planning, Program Development and Budget, it would be appropriate to adopt the following resolutions:

RESOLVED upon recommendation of the Board Committee on Planning, Program Development and Budget, subject to enactment of SB 686 and the amounts authorized therein effective January 1, 2008, the Board of Governors hereby sets the annual membership fee for active members in 2008 at $400 and the annual membership fee for inactive members at $125; and it is

FURTHER RESOLVED that the total Keller deduction for the 2008 annual membership fee be set at $10, which shall include $5 for legislative activities under Business and Professions Code section 6140.05 and $5 for activities in the Bar Relations and Elimination of Bias programs; and it is

FURTHER RESOLVED that the penalties imposed on delinquent 2008 annual membership fees be set at $100 for active members and $30 for inactive members; and it is

FURTHER RESOLVED that the penalties on delinquent 2007 annual membership fees for all members, other than new admittees, billed on or after December 19, 2006 be set at $100 for active members and $30 for inactive members; and it is

FURTHER RESOLVED that said penalties in the preceding paragraphs shall be assessed on February 2, 2008; and it is

FURTHER RESOLVED that the reinstatement penalties for members to terminate suspension for nonpayment of accrued fees, penalties, and costs be set at $100; and it is

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FURTHER RESOLVED that late payment penalties for new members admitted in 2008 be assessed and set on the 46th day from the invoice date as follows: $100 for those admitted on or before May 31, 2008, and $50 for those admitted on or after June 1, 2008; and it is

FURTHER RESOLVED that the interest on assessed costs for reimbursement to the Client Security Fund be set at 10% annually calculated from the date of disbursement as set forth by the Board, pursuant to Business and Professions Code section 6140.5(c); and it is

FURTHER RESOLVED that the administrative penalty on failure to comply with binding arbitration is charged at a fee not to exceed 20% of the amount ordered refunded to the client or $1000 whichever is greater; and it is

FURTHER RESOLVED that all payments submitted after the Board of Governors have recommended members' suspension for non-payment of fees must be made in cash, credit card or guaranteed funds by cashier's check, money order, bank certified check, or wire transfer.

Attachment 1

Schedule of Charges and Deadlines for 2008

Adopted by the Board of Governors
July 20, 2007

Note: Charges are base amounts that may be increased as specified by rule or otherwise authorized by law.

Rule	*Description*	*Amount*	*2008 deadline*
2.11	Annual membership fees for active membership	$400.00	February 1
	Annual membership fees for inactive membership	$125.00	February 1
2.12	(A) Admission between January 1 and May 31	$400.00	45 days from invoice date
	(B) Admission between June 1 and November 30	$200.00	45 days from invoice date
	(C) Administrative fee for admission in December	None	N/A
2.13	Penalties for late payment of annual fees received at the State Bar or USPS-postmarked *after February 1, 2007.*		
	Active Members	$100.00	February 1
	Inactive Members	$30.00	February 1
	Admittees before May 31	$100.00	45 days from invoice date
	Admittees after June 1	$50.00	45 days from invoice date
2.15	(A) Scaling deadline for qualified active members (25 % reduction active membership fees of $400)	$300.00	February 1
	(B) Scaling deadline for qualified employers (25 % reduction active membership fees of $400)	$300.00	February 1
2.31	Transfer to active status	$400.00	For transfer at any time
	Transfer to inactive status	$125.00	February 1
2.33	(C)(2) Reinstatement fee to terminate suspension for nonpayment	$100.00	At time reinstatement is requested