

AGENDA ITEM

OCTOBER 112
Amendments to July 142
Member Fees, Scaling, Penalties
and Due Dates

DATE: October 20, 2009

TO: Members, Board Committee on Operations
Members, Board of Governors

FROM: Peggy Van Horn, Senior Executive, Finance
Larry Yee, Acting General Counsel

SUBJECT: Amendments to July 142 – Membership Fees, Fee Scaling, Penalties
and Due Dates

EXECUTIVE SUMMARY

In this item, staff requests that the Board of Governors amend its resolution adopted at its meeting on July 17, 2009, setting the fees, deductions, penalties, other charges and schedule for the collection of the 2010 annual membership fee. The Board is also requested to authorize that active members be asked to voluntarily pay an additional \$315, the amount that is or was in Senate Bill No. 641 and expected to be included in new legislation requested by the Governor.

DISCUSSION

At its July meeting, the Board of Governors of the State Bar of California adopted a resolution contingent on the enactment of Senate Bill No. 641 (2008-2009 Regular Session), setting the amounts and schedule of the 2010 membership fees, the deductions to comply with requirements under *Keller v. State Bar of California*, interest on Client Security Fund reimbursements, and various penalties and compliance fees. With the veto of SB 641, current Business and Professions Code section 6140, which will “sunset” on January 1, 2010 and would have been extended by SB 641, the State Bar no longer has the authority to require the payment of \$315 as part of the annual membership fee by active members of the of the State Bar. However, under other provisions of the State Bar Act, the State Bar may continue to collect membership fees of \$95 from active members and \$125 from inactive members. See *In Re Attorney Discipline System*, 19 Cal. 4th 582, 590-591 (1990). The provisions and amounts are set forth in the tables below.

Active Membership Fees		
Bus. & Prof. Code	Purpose	\$ Amount
§ 6140.3	Building Fund	10
§ 6140.35	IT-Special Assessment	10
§ 6140.55	CSF	40
§ 6140.6	Discipline	25
§ 6140.9	LAP	10
	Total	95

Inactive Membership Fees		
Bus. & Prof. Code	Purpose	\$ Amount
§ 6141	General	75
§ 6140.3	Building Fund	10
§ 6140.55	CSF	10
§ 6140.6	Discipline	25
§ 6140.9	LAP	5
Total		125

FISCAL IMPACT

The 2010 proposed budget and financial forecasts were based on the assumption of the enactment of SB 641 to permit the setting of active fee at \$410 and the continuing authority to set inactive fee at \$125. Existing authority will permit the State Bar to set active fee of \$95, as well as the inactive fee of \$125. A fuller discussion of the fiscal impact is scheduled for the regular meeting in November.

BOARD BOOK/ADMINISTRATIVE MANUAL

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

STATE BAR RULES IMPACT

This agenda item would revise the Schedule of Charges and Deadlines, which appears at Appendix A of the Rules of the State Bar.

RECOMMENDATIONS

It is recommended that the Board amend its July resolution:

- (1) to authorize collection of \$95 active membership fee;
- (2) to authorize the requesting of active members to voluntarily pay the \$315 proposed in SB 641 and expected to be in urgency legislation to be enacted next year;
- (3) to dispense with the deductions of \$5 for the legislative activities outside of *Keller* and \$5 for bar relations and elimination of bias programs—and the funding of these programs by those members electing not to take the deductions—until normal funding is restored;¹
- (4) to reduce the late payment penalty for 2010 active fees from \$100 to \$25
- (5) to change the membership fees for new members admitted in 2010 from \$410 to \$95 for those admitted between January 1 and May 31, 2010 and from \$205 to \$48 for those admitted between June 1 and November 30, 2010;

¹ No legislative activity outside of *Keller* would be conducted. See Cal. Bus. & Prof. Code § 6140.05(a). Sections may continue its activities under its separate voluntary funding. Cal. Bus. & Prof. Code §§ 6031.5, 6140.05(b). Bar relations and elimination of bias programs will be funded by carryover from the 2009 budget.

(6) to change the late payment penalties for new members admitted in 2010 from \$100 to \$25 for those admitted between January 1 and May 31, 2010, and from \$50 to \$12 for those admitted between June 1 and November 30, 2010.

If you concur, you may adopt the following resolution.

BOARD RESOLUTION

RESOLVED, that the Board Committee on Operations recommends that the Board of Governors authorize that subject to appropriate consultation with the Legislature and the Governor's office, members of the State Bar shall be billed annual membership fees in the amounts required under existing law; and it is

FURTHER RESOLVED, that the Board Committee recommends that the Board amend the resolution and schedule of charges and deadlines in July 142 at its meeting on July 17, 2009, in the form attached hereto; and it is

FURTHER RESOLVED, that the membership fee billing include a request to active members to voluntarily pay an additional \$315.

JULY 142

RESOLVED ~~upon recommendation of the Board Committee on Planning, Program Development and Budget, subject to enactment of SB 641 and the amounts authorized therein effective January 1, 2010, until further legislative action in 2010,~~ the Board of Governors hereby sets the annual membership fee for active members in 2010 at ~~\$440~~ \$95 and the annual membership fee for inactive members at \$125; and it is

FURTHER RESOLVED that active members of the State Bar be requested to voluntarily pay in advance the additional \$315 that will be requested in legislation anticipated for 2010; and it is

FURTHER RESOLVED ~~that the total Keller deduction for the 2010 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 2010 annual membership fees be set at ~~\$100~~ \$25 for active members and \$30 for inactive members; and it is

FURTHER RESOLVED that the penalties on delinquent 2009 annual membership fees for all members, other than new admittees, billed on or after December 19, 2008 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, 2010; and it is

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

FURTHER RESOLVED that the membership fees for new members admitted in 2010 be set as follows: fees of ~~\$440~~ \$95 for those admitted between January 1 and May 31, 2010 and ~~\$205~~ \$48 for those admitted between June 1 and November 30, 2010; and it is

FURTHER RESOLVED that late payment penalties for new members admitted in 2010 be assessed and set on the 46th day from the invoice date as follows: ~~\$100~~ \$25 for those admitted between January 1 and May 31, 2010, and ~~\$50~~ \$12 for those admitted between June 1 and November 30, 2010; and it is

FURTHER RESOLVED that the MCLE noncompliance fee be set at \$75 and the reinstatement fee to terminate MCLE inactive enrollment be set at \$200 for 2010; 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 \$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 by a credit card accepted by the State Bar, in cash, or by cashier's check, money order, bank certified check, or wire transfer.

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Rules of the State Bar of California

Appendix A: Schedule of Charges and Deadlines for 2010

Adopted by the Board of Governors July 17, 2009

“The ‘Schedule of Charges and Deadlines’ is the current schedule adopted by the Board of Governors that specifies by rule number and title any amount that must be paid and the date for paying it or otherwise taking an action required to comply with a rule.”² The Rules of the State Bar provide that “If a rule refers to the Schedule of Charges and Deadlines, the referenced date or amount is part of the rule.”³

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

<i>Rule</i>	<i>Description</i>	<i>Amount</i>	<i>2010 deadline</i>
2.11	Annual membership fees for active membership	\$440.00 \$95.00	February 1
	Annual membership fees for inactive membership	\$125.00	February 1
2.12	(A) Admitted between January 1 and May 31	\$440.00 \$95.00	45 days from invoice date
	(B) Admitted between June 1 and November 30	\$206.00 \$48.00	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 <i>after February 1</i>		
	Active Members	\$100.00 \$25.00	February 1
	Inactive Members	\$30.00	February 1
	Members admitted between January 1 and May 31	\$100.00 \$25.00	45 days from invoice date
	Members admitted between June 1 and November 30	\$50.00 \$12.00	45 days from invoice date
2.15	(A) Scaling deadline for qualified active members (25% reduction active membership fees of \$440 \$95)	\$307.50 \$71.25	February 1 or 45 days from date of invoice if admitted between January 1 and May 31
	(B) Scaling deadline for qualified employers (25% reduction active membership fees of \$440 \$95)	\$307.50 \$71.25	February 1
2.16	(J) Waiver of unpaid annual membership fees and penalties accruing for years 2008 and earlier	50% of accrued annual membership fees and penalties	For waivers granted December 31, 2010 or earlier
2.31	Transfer to active status	\$95.00	For transfer at any time
	Transfer to inactive status	\$125.00	February 1

² State Bar Rule 1.22(E).

³ State Bar Rule 1.20(L).

2.33	(C)(2) Reinstatement fee to terminate suspension for nonpayment ⁴	\$100.00	At time reinstatement is requested
2.71	MCLE noncompliance	\$75.00	February 1
2.71 and 2.93	Reinstatement fee to terminate MCLE inactive enrollment	\$200.00	At time reinstatement is requested

⁴ Business & Professions Code § 6143 provides that the reinstatement fee may not exceed double the amount of delinquent fees, penalties, or costs.