

# AGENDA ITEM

## SEPTEMBER 114

2011 Membership Fees, Fee Scaling and Due Date, Penalties on Delinquent Fees and Date for Attachment of Penalties, Discipline Costs, Client Security Fund Reimbursements, Interest and Other Fees, MCLE Noncompliance and Reinstatement from MCLE Inactive Enrollment.

**DATE:** September 22, 2010

**TO:** Members of the Board Committee on Operations  
Members of the Board of Governors

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

**SUBJECT:** 2011 Membership Fees, Fee Scaling and Due Date, Penalties on Delinquent Fees and Date for Attachment of Penalties, Discipline Costs, Client Security Fund Reimbursements, Interest and Other Fees, MCLE Noncompliance and Reinstatement from MCLE Inactive Enrollment.

### **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 on delinquent membership fees, the interest rate for Client Security Fund reimbursements, MCLE noncompliance fees and reinstatement fees. The Board must also authorize the date for the attachment of such penalties and interest. For 2011, staff is proposing that the Board adopt the maximum active and inactive fees allowed under AB 2764 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 AB 2764<sup>1</sup>, membership fees for 2011 may not exceed \$410 for active members and \$125 for inactive members.

This agenda item requests that the Board set fees, costs, and penalties for 2011, as described below and listed in the Schedule of Charges and Deadlines. (Attachment 1)

### **Annual Membership Fees**

The fees recommended for 2011 are allocated to the State Bar's various funds as follows:

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<sup>1</sup> This bill is contingent on approval by the Governor or if he does not act by September 30 will become a statute, effective January 1, 2011. Cal. Const. art. IV, § 10(b)(2).

Fee Type	General Fund*	Building Fund	Client Security Fund	Lawyer Assistance Program	Information Technology Special Assessment	Total
Active	340.00	10.00	40.00	10.00	10.00	410.00
Inactive	100.00	10.00	10.00	5.00	0.00	125.00

\*The amounts of both the active and inactive fees allocated to the general fund include \$25 for disciplinary activities (Bus. & Prof. Code § 6140.6), \$10 for the Keller Deductions, and \$10 for the Temporary Emergency Legal Services Voluntary Assistance Fund (Bus. & Prof. Code § 6140.01) created under AB 2764.

### **\$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.

### **\$10 Temporary Emergency Legal Services Voluntary Assistance Option**

AB 2764 adds new section 6140.01 to the Business and Professions Code to create the Temporary Emergency Legal Services Voluntary Assistance Option, directing, until January 1, 2014, \$10 of membership dues to support nonprofit organizations that provide free legal services to persons of limited means, unless a member elects not to support those activities. This section also requires that the annual statement sent to each member of the State Bar provide the member with the option of deducting \$10 from his or her membership dues if he or she elects not to have this amount allocated to legal services purposes.

### **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 2011.

### **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 2011, 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 February 14, 2010 and have not paid their 2010 membership fees.

### **MCLE Noncompliance and Reinstatement from MCLE Inactive Enrollment**

Rule 2.71 of the MCLE rules pertains to member compliance periods and states, “... Fees for noncompliance are set forth in the Schedule of Charges and Deadlines.” Accordingly, it would be appropriate to approve fees for MCLE noncompliance and for reinstatement to terminate MCLE inactive enrollment, and to include these fees in the Schedule of Charges and Deadlines. The amount recommended for the MCLE noncompliance fee is \$75. The amount recommended for the reinstatement fee is \$200. These fee amounts are unchanged from prior years.

### **Fees and Late Payment Penalties for 2011 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 2011, Title 2, Rule 2.12 provides for the following initial membership fees: full annual fees (\$410) if admitted between January 1 and May 31, 2011; one-half the annual fee (\$205) if admitted between June 1 and November 30, 2011. Staff recommends that a late payment penalty for new admittees in 2011 be assessed as follows: \$100 for those admitted between January 1 and May 31, 2011, and \$50 for those admitted between June 1 and November 30, 2011.

### **Interest on Client Security Fund Reimbursements**

Pursuant to Business and Professions Code section 6140.5(c), 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, judgment, or agreement, not to exceed 20% of the amount ordered refunded to the client or \$1,000, whichever 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 2011 billing year, staff recommends that the initial mailing be sent to members by December 1, 2010 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 9<sup>th</sup>. The list of unpaid members will be submitted to the Board for approval to forward the names to the Supreme Court for suspension two months after the mailing of the final delinquent notice.

### **FISCAL IMPACT**

The 2011 proposed budget and financial forecasts are based on the assumption that the active fee will be set at \$410 and that the inactive fee will be set at \$125. The plan takes into consideration the \$5 lobbying deduction, the \$5 bar relations and elimination of bias deduction, and the new \$10 temporary emergency legal services voluntary assistance deduction that are available to members.

### **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.

### **RECOMMENDATION**

Staff recommends that 2011 annual membership fees be set at \$410 for active members and \$125 for inactive members, and the late payment penalties imposed on delinquent 2011 membership fees and delinquent 2010 membership fees of all members, other than new admittees, who were billed on or after February 14, 2010, be assessed on February 2nd at \$100 for active members and \$30 for inactive members.

Staff also recommends that the MCLE noncompliance fee be set at \$75, and the reinstatement fee to terminate MCLE inactive enrollment be set at \$200.

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 Operations concurs with staff's recommendations, the following resolutions are suggested:

**RESOLVED** that the Board Committee on Operations hereby recommends that, subject to enactment of AB 2764 and the amounts authorized therein effective January 1, 2011, the Board of Governors set the annual membership fee for active members in 2011 at \$410 and the annual membership fee for inactive members at \$125; and it is

**FURTHER RESOLVED** that the total Keller deduction for the 2011 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 under the Temporary Emergency Legal Services Voluntary Assistance Option in Business and Professions Code section 6140.01, a \$10 deduction from the annual membership fee is to be provided to each member if the member elects not to have this amount allocated to support nonprofit organizations that provide free legal services to persons of limited means and it is

**FURTHER RESOLVED** that the penalties imposed on delinquent 2011 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 2010 annual membership fees for all members, other than new admittees, billed on or after February 14, 2010 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, 2011; 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 2011 be set as follows: fees of \$410 for those admitted between January 1 and May 31, 2011 and \$205 for those admitted between June 1 and November 30, 2011; and it is

**FURTHER RESOLVED** that late payment penalties for new members admitted in 2011 be assessed and set on the 46th day from the invoice date as follows: \$100 for those admitted between January 1 and May 31, 2011, and \$50 for those admitted between June 1 and November 30, 2011; 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 2011; 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.

## **BOARD RESOLUTION**

Should the Board of Governors concur with the recommendation of the Board Committee on Operations, it would be appropriate to adopt the following resolutions:

**RESOLVED** upon recommendation of the Board Committee on Operations, subject to enactment of AB 2764 and the amounts authorized therein effective January 1, 2011, the Board of Governors hereby sets the annual membership fee for active members in 2011 at \$410 and the annual membership fee for inactive members at \$125; and it is

**FURTHER RESOLVED** that the total Keller deduction for the 2011 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 under the Temporary Emergency Legal Services Voluntary Assistance Option in Business and Professions Code section 6140.01, a \$10 deduction from the annual membership fee is to be provided to each member if the member elects not to have this amount allocated to support nonprofit organizations that provide free legal services to persons of limited means and it is

**FURTHER RESOLVED** that the penalties imposed on delinquent 2011 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 2010 annual membership fees for all members, other than new admittees, billed on or after February 14, 2010 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, 2011; 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 2011 be set as follows: fees of \$410 for those admitted between January 1 and May 31, 2011 and \$205 for those admitted between June 1 and November 30, 2011; and it is

**FURTHER RESOLVED** that late payment penalties for new members admitted in 2011 be assessed and set on the 46th day from the invoice date as follows: \$100 for those admitted between January 1 and May 31, 2011, and \$50 for those admitted between June 1 and November 30, 2011; 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 2011; 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.