

## **Attachment C**

### **Proposed Adjustments to Legal Specialization Fees**

#### **EXECUTIVE SUMMARY**

The last adjustment in Legal Specialization fees was approved by the Board of Governors on January 23, 1993, retroactive to January 1, 1993. Over the last several years, the fiscal condition of the Legal Specialization Fund has changed significantly. As a result, the Board of Legal Specialization requests that adjustments to the fees charged in connection with the program be considered and approved by the Board of Governors to ensure the continued viability of the program. If the Board approves the proposed Legal Specialization Schedule of Charges and Deadlines, the new fees would be effective January 1, 2011.

#### **BACKGROUND**

The last adjustment in Legal Specialization fees was approved by the Board of Governors on January 23, 1993, retroactive to January 1, 1993. Attachment D shows the fees that are now charged. They are presented in the same format as most other State Bar fees (Schedule of Charges and Deadlines), although they have not been approved by the Board in this manner previously. For many years the fees collected annually from certified specialists and from applicants seeking certification adequately covered expenses and a fairly large carry-forward or "reserve" was available. During the past couple of years, however, expenses have increased significantly, and there has not been a corresponding increase in the revenue received. As a result, the reserve has been used to cover the operational costs of the program. The reserve will be exhausted in 2012 if nothing is changed. The Board of Legal Specialization (BLS) has considered this matter and believes that adjustments to the fees charged in connection with the program must be made to ensure that the fiscal stability of the program is maintained. The BLS requests that the Schedule of Charges and Deadlines for the Legal Specialization program in the form of Attachment E, be considered and approved by the Board of Governors.

Costs have increased for several reasons, but primarily due to increases in the Interfund charges, expenses related to production and administration of the examinations and to how staff was allocated to the program. Additionally, revenues have not met budgetary goals, as fewer attorneys have been certified as specialists than anticipated and others have declined to continue their participation in the program because of retirement or their own financial difficulties.

The Interfund charge more than doubled between 2009 and 2010. The reasons for the increase in Interfund charges to the various separate funds have been discussed with the Board of Governors previously by the Chief Financial Officer, but they primarily have to do with reallocation of shared space and operational expenses that previously had been allocated to other cost centers, which the Board felt should be more appropriately shared by all the departments that used the facilities and services.

The expenses for the Legal Specialization program have also risen as a result of the three new specialties that were added three years ago, which resulted in greater travel expenses that have not been offset, yet, by a significant number of new Specialists who, after completing all requirements for certification, would be contributing to the Fund through payment of the annual fee. In addition, other legal specialization related expenses that had been shared with other cost centers because of the management structure in place at the time, are now being charged solely to the Legal Specialization department. For instance, in the past, only a percentage of the expenses related to the department's Director and her Senior Administrative Assistant were charged to the Legal Specialization program because the Director was also supervising other programs. Now, the Director's sole responsibility is to manage the Legal Specialization department, which is as it should be.

The cost to develop and administer the examination, which is given every other year, continues to rise due to increased facility costs, proctor costs and costs for laptop technology that test-takers require. The program also continues to invest in several new specialty areas in fulfillment of its mission to increase public protection across a broad range of practice areas to the extent possible. Finally, the program needs to update its technology in order to meet the expectations of today's new lawyers, and provide maximum value to the State Bar's certified specialists.

For all these reasons, the expenses are greater now and anticipated in the future than they have been in the past, and are at the point where they are significantly more than the revenue being collected.

Revenue for the last several years has been:

2006	\$ 998,397
2007	\$1,204,460
2008	\$ 996,619
2009	\$1,188,948
2010	\$1,002,460 (Budgeted)

The expenses and revenues fluctuate from year to year because of the administration of the Legal Specialization examinations, which results in increases both revenues and expenses.

Expenses during the same period have climbed for reasons discussed above:

2006	\$1,010,120
2007	\$1,157,746
2008	\$1,034,368
2009	\$1,188,254
2010	\$1,834,129 (Budgeted);

As mentioned earlier, over the years a fairly large reserve accumulated in the Legal Specialization Fund, even though there were years when expenses outpaced revenues, which was primarily connected to the timing of the Legal Specialization examinations (every other year) and when the application fees from applicants intending to take the examination were received. When the 2010 budget was approved last year, it was clear that the program would spend nearly half of the Legal Specialization Fund's reserve, but the bottom line still showed a positive carry-forward. The budgeted carry-forward of almost \$1,000,000 from this year combined with the projected revenues for next year will cover the cost of the program in 2011, but in 2012 there will be a deficit in the Legal Specialization Fund if nothing is done. The prior and projected carry-forwards have been:

2007	\$1,875,859
2008	\$1,838,109
2009	\$1,838,804
2010	\$1,207,135 (Projected)

Historically, it has been believed that an adequate reserve should be maintained in the Legal Specialization Fund to ensure that there are adequate funds to be able to carry the program through the years when revenue was less than expenses due to the timing of the examinations and in the event of an incident that might require an unplanned expenditure of funds, such as a security breach or catastrophic event like an earthquake or flood that would substantively affect an administration of an examination.

Absent an adjustment in fees, or a drastic alteration of program activities, it appears the reserve will continue to be used to offset the program's expenses and in 2012, it will be depleted. Even if fee adjustments are approved, the program will still have to rely upon its reserves in 2011. The fee adjustments would, however, allow the program to adjust to the new overhead charges and allow for at least some reserves in case of an emergency, though far fewer than the program historically carried.

As mentioned earlier, the Legal Specialization department has already implemented several cost savings measures, and will continue to do so. These steps include streamlining examination development, using more conference call connections for Commission meetings in place of in-person meetings and cutting staff travel to at least keep expenses static even as some costs, such as examination room rentals, continue to rise. The department has done more with less, especially considering that the program

has grown from eight specialties to eleven specialties over the last four years and no new staff was added to accommodate the new specialties.

The BLS has considered these issues during recent meetings, and it believes that the best approach to ensuring a balanced budget and the continued fiscal stability of the Legal Specialization fund is through the adjustment to the fees that are charged, which it is recommending to the Board of Governors. In addition to increasing the annual and examination-related fees, it is recommended that new fees be attached to various steps of the process, which would spread the financial burden to attorneys seeking certification over time, i.e., an application fee to take the examination and then if an attorney passes, an application fee to become certified. Attachment E is the recommended Schedule of Charges and Deadlines for the Legal Specialization program beginning January 1, 2011.

Attachment F is a summary of expenses and revenues over the last couple of years, budgeted expenses and revenues for this year and anticipated revenues if the fee adjustments are, or are not, approved.

#### **FISCAL/PERSONNEL IMPACT**

If the proposed fee adjustments are approved, the revenue budget for 2011 would increase by \$495,530.

#### **BOARD BOOK IMPACT**

None.

#### **RULE AMENDMENTS**

None.

#### **SCHEDULE OF CHARGES AND DEADLINES**

Attachment E is a proposed Schedule of Charges and Deadlines.

#### **EFFECTIVE DATE OF PROPOSAL**

The adjusted fees, if approved by the Board, would become effective January 1, 2011.