

# AGENDA ITEM

**MAY 141** Law Corporations and Limited Liability Partnerships Programs: Addition of Fees, Deadlines and Penalties to Appendix A: Schedule of Charges and Deadlines

**DATE:** April 28, 2011

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

**FROM:** Dina DiLoreto, Director of Administration, Member Services

**SUBJECT:** Law Corporations Program and Limited Liability Partnerships Program:  
Addition of Fees, Deadlines and Penalties to Appendix A: Schedule of  
Charges and Deadlines

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## EXECUTIVE SUMMARY

As a part of the State Bar's rules revision project, in September 2010 the Board of Governors adopted Title 3, Rules 3.150 – 3.161 [Law Corporations] for addition to the Rules of the State Bar. By law, the California Supreme Court must approve the revised Law Corporation rules. The Court has approved the revised Law Corporations rules and repealed the old rules, effective April 15, 2011.

As part of the same rules revisions project, the Board adopted Rules 3.170 – 3.180 [Limited Liability Partnerships] ("LLP") for addition to the Rules of the State Bar and repealed the old LLP rules, effective August 1, 2010.

A core principle of the State Bar rules revision project is centralization of fees, penalties, and deadlines of State Bar programs in the Schedule of Charges and Deadlines. In keeping with this principle, the revised Law Corporations rules and revised LLP rules reference the Schedule of Charges and Deadlines for fees, deadlines, and penalties.

It is requested that the Board add to Appendix A of the Schedule of Charges and Deadlines the fees, deadlines, and penalties of the Law Corporations program and the LLP program, as described in this memorandum and shown in the attached Appendixes A.

Board members with questions about the proposal may contact Dina DiLoreto at (415) 538-2121 or [dina.diloreto@calbar.ca.gov](mailto:dina.diloreto@calbar.ca.gov), or contact Mary Yen at (415) 538-2369 or [mary.yen@calbar.ca.gov](mailto:mary.yen@calbar.ca.gov).

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## BACKGROUND

On March 6, 2010, the Board of Governors adopted revised rules 3.170-3.180 for the LLP program in Title 3 of the Rules of the State Bar, effective August 1, 2010. These new LLP rules replace the former LLP rules that were repealed at the same meeting.

On September 22, 2010, the Board adopted revised rules 3.150-3.161 for the Law Corporations program in Title 3 of the Rules of the State Bar, subject to approval by the California Supreme Court, as required by Business and Professions Code<sup>1</sup> section 6171. In March, the California Supreme Court approved the revised Law Corporations rules and repealed the former rules with an effective date of April 15, 2011.

In conformity with a core principle of the State Bar rules revision project, the newly revised Law Corporations rules and LLP rules reference the Schedule of Charges and Deadlines for fees, penalties and deadlines of the two programs. It is now requested that fees, penalties, and deadlines, of the two programs be added to Appendix A of the Schedule of Charges and Deadlines, as shown in the attached.

## **ISSUE**

Whether to add to Appendix A of the Schedule of Charges and Deadlines the fees, penalties, and deadlines of the Law Corporations program and the fees, penalties, and deadlines of the LLP program.

## **CONCLUSION**

It would be appropriate to add to Appendix A of the Schedule of Charges and Deadlines the fees, penalties, and deadlines of the Law Corporations program and the fees, penalties, and deadlines of the LLP program.

## **DISCUSSION**

### **A. Law Corporations Fees, Penalties, and Deadlines**

In accordance with sections 6160 through 6172, State Bar rules approved by the California Supreme Court govern registration of law corporations by the State Bar. In the old law corporation rules, rule III(A) provided that an applicant for registration as a law corporation must pay a fee in an amount determined by the State Bar. Rule IV(B) of the old rules stated the specific amount of security that law corporations must provide against claims by clients for errors or omissions arising out of the corporation's practice of law. Old rule VI required annual reports accompanied by a fee in an amount fixed by the State Bar. Furthermore, section 6163(a) authorizes the State Bar to fix a penalty for the late filing of an annual report and to set a deadline upon which the penalty will attach for the late filing; the date when the penalty attaches must be not less than 31 days following the date fixed for filing the annual report.

In relevant part, listed below are the newly revised Law Corporations rules<sup>2</sup> that reference the Schedule of Charges and Deadlines:

1. Application fee. Rule 3.152(A)(1) states

To apply to register as a law corporation an applicant must

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<sup>1</sup> Unless otherwise noted, statutory references are to the Business and Professions Code.

<sup>2</sup> Some State Bar rules contain footnotes to statutory authority. When it is referenced in a footnote to a rule, the statutory authority is an official part of the rule. (State Bar rule 1.20(K) [Construction].)

- (1) submit an Application to Register as a Law Corporation with the fee set forth in the Schedule of Charges and Deadlines;
2. Annual Renewal<sup>3</sup> fee and deadline. Rule 3.156 states:
- (A) A law corporation must annually renew its authorization to practice law by submitting an Annual Renewal with the fee set forth in the Schedule of Charges and Deadlines. ...The deadline for submission of the Annual Renewal and the amount of the fee are set forth in the Schedule of Charges and Deadlines.
  - (B) A law corporation that fails to submit a complete Annual Renewal and fee is suspended and is not entitled to practice law. It may be reinstated upon submission within one year of the renewal, fee, and any penalty. If the suspension lasts more than one year, the registration of the law corporation is involuntarily terminated.
  - (C) This rule does not apply to a qualified legal services project<sup>4</sup> or qualified support center<sup>5</sup> incorporated as a nonprofit public benefit corporation.<sup>6</sup>
3. Security. Rule 3.158 states
- (A) Each law corporation must provide the State Bar with proof of security for claims for errors and omissions of the corporation or any person who practices law on behalf of the corporation on its behalf as an employee or otherwise. The law corporation must provide proof of security with its Application to Register as a Law Corporation and provide new proof of security when that last provided is no longer current. Proof of security must be provided as indicated below.
    - (1) All law corporations except as otherwise provided in this rule must provide as a Law Corporation Guarantee providing that the shareholders jointly and severally agree to pay all claims established against the law corporation for errors and omissions arising out of the rendering of professional services. The guarantee must name each shareholder and be executed by each.<sup>7</sup>
    - (2) A nonprofit public benefit corporation<sup>8</sup> must provide a certificate of annual insurance.
    - (3) Law corporations incorporated before October 27, 1971 that have elected to provide security by insurance must provide a certificate of insurance.

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<sup>3</sup> Business & Professions Code §§ 6161.1, 6163.

<sup>4</sup> Business & Professions Code § 6213(a).

<sup>5</sup> Business & Professions Code § 6213(b).

<sup>6</sup> Corporations Code § 13406(c).

<sup>7</sup> Business & Professions Code § 6171(b).

<sup>8</sup> Corporations Code § 13406(b).

(B) For purposes of determining the amount required as proof of security, a person who practices law on behalf of a law corporation includes

(1) any employee, other person, or partnership in which the law corporation is a partner and that the law corporation holds out as being of counsel or otherwise available to practice law on behalf of the law corporation; and

(2) any association that has a continuous relationship with the law corporation for the practice of law, or that the association, with the consent of the law corporation, holds out as being of counsel or otherwise available to practice law on behalf of the association.

(C) The Schedule of Charges and Deadlines sets forth the minimum amount of security that a law corporation must provide annually for a single claim and for all claims, whether against the corporation or a person practicing law on behalf of the corporation.

Staff requests that the Board approve inclusion of the current Law Corporations fees, penalties, deadlines, and security requirements as an Appendix A to the Schedule of Charges and Deadlines. The current amounts and dates are as follows: a) the application fee for registration is \$200.00; b) the annual renewal of registration is \$75.00 and the deadline for the annual renewal of a law corporation is March 30; c) the penalty for late annual renewal is \$110.00 and the penalty attaches if not paid by May 3; and d) the required amount of security for claims of errors and omissions is \$50,000 per claim and \$100,000 per calendar year for each attorney practicing on behalf of the law corporation, to a maximum amount of \$500,000 per claim and \$5,000,000 per calendar year.

## **B. Limited Liability Partnerships Fees, Penalties, and Deadlines**

In accordance with sections 6174 and 6174.5, State Bar rules govern registration of LLPs by the State Bar. In the old LLP rules, rule 4.4 provided that an application for certification as an LLP must be submitted with the appropriate non-refundable processing fee; rule 10.2 required that an LLP file an Annual Renewal on or before the date set by the State Bar; and rule 10.4 required the Annual Renewal to be submitted with the appropriate renewal fee and any penalty for late filing, as appropriate.

Two newly revised LLP rules reference the Schedule of Charges and Deadlines. In relevant part, these are

1. Application fee. Rule 3.172(A)(1) states

To apply to be certified as a limited liability partnership an applicant must

(1) submit an Application for Certification as a Limited Liability Partnership with the application fee set forth in the Schedule of Charges and Deadlines.

2. Annual Renewal fee and deadline. Rule 3.176(A) states

(A) A limited liability partnership must annually renew its certification as a limited liability partnership by submitting an Annual Renewal with the fee set forth in the Schedule of Charges and Deadlines. ...The deadline for submission of the Annual Renewal and the amount of the fee are set forth in the Schedule of Charges and Deadlines.

Staff requests that the Board approve inclusion of current LLP fees and deadlines as an Appendix A to the Schedule of Charges and Deadlines. The non-refundable processing fee is a minimum of \$100 for the first two partners, plus \$50 per additional partner to a maximum of \$2,500. The non-refundable renewal fee is a minimum of \$75 for the first two partners, plus \$25 per additional partner to a maximum of \$2,500. The deadline for filing the Annual Renewal of an LLP is October 1.<sup>9</sup>

No late penalty has been assessed for late renewal of the registration of an LLP and none is recommended at this time. A security requirement for LLPs is provided in the Corporations Code and therefore does not need Board approval.

**FISCAL / PERSONNEL IMPACT:**

No fiscal or personnel impact is anticipated.

**RULE AMENDMENTS:**

None known. The newly revised Law Corporations rules 3.150 - 3.161 were approved by the Board and the California Supreme Court, effective April 15, 2011. The newly revised LLP rules 3.170 - 3.180 were adopted by the Board, effective August 1, 2010.

**BOARD BOOK IMPACT:**

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

**RECOMMENDATION**

It is recommended that the Board add to the Schedule of Charges and Deadlines an Appendix A for the Law Corporations program, with the application fee for registration to be \$200.00; the annual renewal of registration to be \$75.00 and the deadline for the annual renewal to be March 30; the penalty for late annual renewal to be \$110.00 with the penalty attaching if not paid by May 3; and the required amount of Law Corporations security for claims of errors and omissions to be \$50,000 per claim and \$100,000 per calendar year for each attorney practicing on behalf of the law corporation, to a maximum amount of \$500,000 per claim and \$5,000,000 per year.

It is recommended that the Board add to the Schedule of Charges and Deadlines an Appendix A for the LLP program, with the application fee for certification to be \$100.00 for first two partners, plus \$50.00 per additional partner to a maximum of \$2,500.00; and the annual renewal of certification to be \$75.00 for first two partners, plus \$25.00 per additional partner to a maximum of \$2,500.00 and the deadline for the annual renewal to be October 1.

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<sup>9</sup> Under State Bar rule 1.23 (Dates), if a deadline for performing a requirement falls on a Saturday, Sunday, or legal holiday, the deadline is extended to the next weekday on which the State Bar is open for business. In 2011, October 1 will fall on a Saturday, so the LLP Renewal deadline will be Monday, October 3, 2011.

**PROPOSED BOARD COMMITTEE RESOLUTION:**

Should the Planning, Program Development and Budget Committee agree with the above recommendation, the following resolutions would be appropriate:

**RESOLVED** that the Planning, Program Development, and Budget Committee hereby recommends that the Board of Governors add to the Schedule of Charges and Deadlines an Appendix A for Law Corporations, with a \$200.00 application fee for registration; a \$75.00 annual renewal of registration fee and a March 30 deadline for the annual renewal and fee; a \$110.00 penalty for late annual renewal and a May 3 deadline for renewal before the penalty attaches; and security for claims of errors and omissions in a required amount of \$50,000 per claim and \$100,000 per calendar year for each attorney practicing on behalf of the law corporation, to a maximum amount of \$500,000 per claim and \$5,000,000 per year; and it is

**FURTHER RESOLVED** that the Planning, Program Development, and Budget Committee hereby recommends that the Board add to the Schedule of Charges and Deadlines an Appendix A for Limited Liability Partnerships, with an application fee for certification of \$100.00 for first two partners, plus \$50.00 per additional partner to a maximum of \$2,500.00; and an annual renewal of certification fee of \$75.00 for first two partners, plus \$25.00 per additional partner to a maximum of \$2,500.00 and an October 1 deadline for the annual renewal.

**PROPOSED BOARD RESOLUTION:**

Should the Board concur with the Planning, Program Development, and Budget Committee's recommendation, the following resolutions would be in order:

**RESOLVED**, that upon the recommendation of the Board Committee on Planning, Program Development, and Budget, the Board of Governors hereby adds to the Schedule of Charges and Deadlines an Appendix A for Law Corporations, with a \$200.00 application fee for registration; a \$75.00 annual renewal of registration fee and a March 30 deadline for the annual renewal and fee; a \$110.00 penalty for late annual renewal and a May 3 deadline for renewal before the penalty attaches; and security for claims of errors and omissions in a required amount of \$50,000 per claim and \$100,000 per calendar year for each attorney practicing on behalf of the law corporation, to a maximum amount of \$500,000 per claim and \$5,000,000 per year; and it is

**FURTHER RESOLVED** upon the recommendation of the Planning, Program Development, and Budget Committee, the Board of Governors hereby adds to the Schedule of Charges and Deadlines an Appendix A for Limited Liability Partnerships, with an application fee for certification of \$100.00 for first two partners, plus \$50.00 per additional partner to a maximum of \$2,500.00; and an annual renewal of certification fee of \$75.00 for first two partners, plus \$25.00 per additional partner to a maximum of \$2,500.00 and an October 1 deadline for the annual renewal.

**ATTACHMENTS:**

- Attachment 1: Appendix A for Law Corporations fees, deadlines, and penalties
- Attachment 2: Appendix A for LLP fees and deadlines  
(both to be added to the Schedule of Charges and Deadlines)