

Lobbying and Optional Program Deductions for 2003 Membership Fees

Introduction

In California, all persons licensed to practice law in the state must be admitted and enrolled as a member of the State Bar of California. The State Bar is a constitutional entity established in the judicial branch to assist the California Supreme Court in the admission, discipline and regulation of the legal profession. The Legislature also charges the State Bar with engaging in other activities to improve the administration of justice and to advance the science of jurisprudence. As a requirement of bar membership, California lawyers must pay statutorily mandated membership fees. The fees are used primarily to fund core functions of lawyer discipline and regulation, but a small percentage has also been used to further the State Bar's statutory charge to provide assistance to improve the administration of justice. For example, mandatory member dues have been used to fund things such as formulating rules of professional conduct, disciplining members for misconduct, administering the Client Security Fund to reimburse clients for pecuniary losses caused by member misconduct, evaluating nominees for judicial office, conducting a variety of legal education programs for members and the public, developing programs to improve the delivery of legal services and the access of the public to the judicial system, and providing various member services. In the past, mandatory membership fees have also been used to fund studying and recommending changes in legislation, working with the Judicial Council, and facilitating relations among national, regional and local voluntary bar associations.

The United States Supreme Court's decision in *Keller v. State Bar of California*, 496 U.S. 1, 110 S.Ct. 2228, 110 L. Ed. 2d 1 (1990) placed constitutional limitations on the charging of membership fees to support bar activities that are political or ideological. The Supreme Court held that the First Amendment prohibits the State Bar from charging objecting members the expenses of activities with "political or ideological coloration" that are not reasonably related to the advancement of the State Bar's purposes of regulating the legal profession or improving the quality of legal services. The Court acknowledged that where the line falls is not always easy to discern. But the Court made clear that there are no valid constitutional objections to core State Bar functions such as disciplining lawyers or proposing ethical rules for the profession. *Keller*, 496 U.S. at 14-16.

In 1990, to meet the constitutional requirements of *Keller*, the State Bar adopted procedures outlined in *Chicago Teachers v. Hudson*, 475 U.S. 292, 106 S. Ct. 1066, 89 L. Ed. 2d 232 (1986) and suggested by the Supreme Court in *Keller*, 496 U.S. at 17. Under the procedures, the State Bar set an amount each year that members could deduct from the annual membership fees for activities that it found outside the purview of *Keller*. The deduction was calculated by using the prior year's expenses involving mandated bar dues and categorizing the expenditures as chargeable or non-chargeable under *Keller*. To satisfy the requirement of *Hudson* of "an adequate explanation of the basis for the fees," this statement of chargeable and non-chargeable expenses was then audited and a copy provided to members. Members who were not satisfied with the explanation could object and have the opportunity for their objections to be heard by an impartial decision maker. Each member's share of the expenses reasonably in dispute was placed in escrow pending adjudication of the challenge. The Supreme Court noted in *Keller* that alternate procedures could likewise accommodate objecting members. *Keller*, 496 U.S. at 17.

In 1999, the State Legislature altered the procedures for complying with *Keller*. The Legislature set a \$5 deduction from the annual fee for any member who elects not to support lobbying and related activities of the State Bar outside of the parameters of *Keller*. Expenditures for lobbying and related activities are limited to the amounts voluntarily paid by members not taking the optional deduction. Cal. Bus. & Prof. Code §6140.05. In addition, the Conference of Delegates and State Bar Sections could no longer be supported with membership fees; funding must be from voluntary fees or donations and the cost of any administrative support provided by the State Bar must be fully reimbursed. Cal. Bus. & Prof. Code §6031.5. (In October 2002, a newly formed independent mutual benefit corporation, the Conference of Delegates of California Bar Associations, assumed the functions of the Conference of Delegates; however, the funding limitations and accounting requirements will continue to apply to the successor.) Thereafter, the State Bar adopted the approach of the Legislature by providing that the funding of certain other categories of activities would be similarly limited to fees paid voluntarily by members. The State Bar's annual audit requires an examination of the State Bar's receipts and expenditures to assure compliance with these funding restrictions. Cal. Bus. & Prof. Code §6145.

In the future, the State Bar may further amend the procedures due to changes in circumstances, statutes, or case law. A member may obtain a current copy of the procedures by writing to the Office of the Secretary of the State Bar at the State Bar's main office at 180 Howard Street, San Francisco, California, 94105-1639.

Availability Of Optional Deductions From 2003 Membership Fee

For 2003, members have an option to deduct a total of \$10 from the annual fee. This \$10 deduction includes a \$5 "Lobbying Deduction" and a \$5 "Elimination of Bias & Bar Relations Deduction." The "Lobbying Deduction" is given pursuant to Cal. Bus. & Prof. Code §6140.05, which states that members who elect not to support lobbying and related activities outside the parameters in *Keller* may deduct \$5 from the annual fee. In 2003, the State Bar will treat as optional and nonchargeable the expense of all legislative activities, not just those specified by §6140.05. As a result, funding of all State Bar legislative activity, whether within or outside *Keller*, will be limited to revenues paid voluntarily by those members not taking the deduction. The "Elimination of Bias & Bar Relations Deduction" provides a \$5 deduction to those members who do not wish to support programs to address issues of access and bias in the legal profession and justice system based on race, ethnicity, gender, sexual orientation, or disability; to increase participation of such minority group attorneys who have been under-represented in the administration and governance of the State Bar's programs and activities; and to maintain relations with voluntary bar associations. The State Bar will similarly restrict funding for these activities to revenues paid voluntarily by members not taking the deduction.

The bulk of the annual membership fee is expended on activities that are necessarily or reasonably related to regulating the legal profession or improving the quality of legal service, and therefore are chargeable to all members. A listing and description of the major categories of the chargeable activities, together with the nonchargeable and optional activities to which the Lobbying Deduction and the Elimination of Bias & Bar Relations Deduction apply, appear in the State Bar's Statement of Chargeable and Nonchargeable Expenses for the Year Ending Dec. 31, 2001, which has been audited by the

accounting firm of Deloitte & Touche, LLP. A copy of the audited statement and the Independent Auditors' Report are printed with this notice. This information is also available on the State Bar's Internet site at www.calbar.ca.gov or by contacting Membership Services Operations at 415/538-2360.

Any member who does not wish to support the legislative or the elimination of bias or bar relations activities of the State Bar may take the Lobbying Deduction and the Elimination of Bias & Bar Relations Deduction by following the instructions for line items nos. 20 - 21 of the 2003 membership fee statement. Each deduction must be marked by the member on his or her dues statement and returned together with the timely payment of membership fee, less only the Lobbying Deduction and/or Elimination of Bias & Bar Relations Deduction. For more information about how to take these deductions, contact Membership Services Operations at 415/538-2360.

Challenges To Chargeable Expenses And Their Calculation

Any member may dispute and challenge the accuracy of any of the categories of chargeable expenses in the Statement of Chargeable and Nonchargeable Expenses on the grounds that a chargeable expense category includes activities with political or ideological coloration that are not reasonably related to the State Bar's purpose of regulating the profession or improving the quality of legal service or that the amount calculated for the category was erroneous. A member's challenge must be submitted individually and in writing. The written challenge must include the challenger's name, address, telephone number and bar membership number and should identify the challenged category. A challenger must sign the challenge and submit it along with timely payment of the 2003 membership fee less only the Lobbying Deduction and/or the Elimination of Bias & Bar Relations Deduction.

IMPORTANT!

ANY WRITTEN CHALLENGE MUST INCLUDE FULL AND TIMELY PAYMENT OF THE MEMBERSHIP FEE LESS ONLY THE LOBBYING DEDUCTION AND/OR THE ELIMINATION OF BIAS & BAR RELATIONS DEDUCTION, AND MUST BE POSTMARKED OR DELIVERED BEFORE THE END OF BUSINESS ON MARCH 15, 2003, TO:

SECRETARY
THE STATE BAR OF CALIFORNIA
180 HOWARD STREET
SAN FRANCISCO, CALIFORNIA 94105-1639

Upon receipt of a properly submitted challenge, the State Bar will place the disputed amount of the challenger's fee in an interest-bearing escrow account. At its next regularly scheduled meeting following the deadline or as soon thereafter as the matter may be considered, the Board of Governors will then decide whether to give a pro rata refund to the challenger or to submit the dispute for expeditious arbitration before an impartial arbitrator. If the dispute is submitted for arbitration, the Board in its discretion may consolidate all challenges. The challenger(s) and the State Bar may select a mutually agreeable, impartial arbitrator. In consolidated challenges, the arbitrator may be selected by an agreement between the State Bar and 75 percent of the challengers. If there is no agreement on an impartial arbitrator within 30 days following the decision to arbitrate, an impartial arbitrator will be appointed by the American Arbitration Association. The State Bar may extend the time to select the arbitrator, not exceeding an additional 30 days. The arbitration will be heard at the San Francisco or Los Angeles office of the State Bar, as determined by the State Bar. The proceedings are informal, and the State Bar will have the burden to show that the disputed matters are within the scope of permissible activities for which mandatory fees may be used under the constitutional standard in *Keller*. The challenger(s) will be given an opportunity to present their own evidence and to present written arguments in support of their challenge(s). The arbitrator will issue a written decision and any award.

THE STATE BAR OF CALIFORNIA

Statement of Chargeable and Nonchargeable Expenses for the Year Ended December 31, 2001, and Independent Auditors' Report

INDEPENDENT AUDITORS' REPORT

To the Board of Governors of
The State Bar of California
San Francisco, California:

We have audited the accompanying Statement of Chargeable and Nonchargeable Expenses (the "Statement") of The State Bar of California (the "State Bar") for the year ended December 31, 2001. This Statement is the responsibility of the State Bar management. Our responsibility is to express an opinion on the Statement based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the Statement is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the Statement. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the Statement. We believe that our audit provides a reasonable basis for our opinion.

The accompanying Statement was prepared for the purpose of showing the allocation of certain expenses into chargeable and nonchargeable categories as described in Note 2 to the Statement and is not intended to be a complete presentation of the State Bar's assets, liabilities, revenues and expenses in conformity with accounting principles generally accepted in the United States of America.

In our opinion, such Statement presents fairly, in all material respects, the chargeable and nonchargeable expenses of the State Bar for the year ended December 31, 2001, on the basis of presentation described in Note 2.

This report is intended solely for the information and use of the Board of Governors, management of the State Bar, and members of the State Bar as defined in Note 1 to the Statement, and is not intended to be and should not be used by anyone other than these specified parties.

Deloitte & Touche LLP, San Francisco

March 15, 2002

The State Bar of California

**STATEMENT OF CHARGEABLE AND NONCHARGEABLE EXPENSES
YEAR ENDED DECEMBER 31, 2001**

	Dollar Amount	Percentage of Total Program Expenses
CHARGEABLE EXPENSES AND RELATED PROGRAM REVENUE (Note 2):		
Discipline	\$30,751,314	88.69%
Administration of justice	669,716	1.93
Competence and certification	2,491,778	7.19
Program development	761,467	2.19
Total chargeable program expenses	34,674,275	100.00%
Allocated administrative overhead	16,750,787	
Program revenue	(5,887,043)	
Net chargeable expenses	45,538,019	
NONCHARGEABLE EXPENSES AND RELATED PROGRAM REVENUE (Note 2):	-	
TOTAL NET CHARGEABLE AND NONCHARGEABLE EXPENSES	\$45,538,019	

See notes to Statement of Chargeable and Nonchargeable Expenses

THE STATE BAR OF CALIFORNIA

**NOTES TO STATEMENT OF CHARGEABLE AND NONCHARGEABLE EXPENSES
YEAR ENDED DECEMBER 31, 2001**

1. SIGNIFICANT ACCOUNTING POLICIES

Description of Entity — The State Bar of California (the "State Bar") was first formed as a public corporation by the California State Legislature's passage of the State Bar Act on July 29, 1927. On November 8, 1960, voters amended the California Constitution to add the State Bar as a constitutional agency in the judicial branch of government. Membership in the State Bar and payment of an annual membership fee are required as a condition of the practice of law in the State of California.

Basis of Accounting — To ensure observance of limitations and restrictions placed on the use of resources available to the State Bar, the accounts of the State Bar are maintained in accordance with the principles of fund accounting. This is the procedure by which resources for various purposes are classified for accounting and reporting purposes into funds established according to their nature and purpose.

Accounting principles generally accepted in the United States of America are applied by the State Bar in conformance with pronouncements of the Governmental Accounting Standards Board ("GASB") and, where not in conflict with GASB pronouncements, the Financial Accounting Standards Board pronouncements issued on or before November 30, 1989.

The assets, liabilities, revenues, expenses and fund balances of the State Bar for the year ended December 31, 2001, were reported in 20 funds as follows: unrestricted general fund, admissions fund, annual meeting fund, attorney diversion and assistance program fund, building fund, client security fund, conference of delegates fund, discipline fund, education foundation fund, elimination of bias and bar relations fund, equal access fund, grants fund, legal education and development fund, legal services trust fund, legal specialization fund, legislative activities fund, public protection reserve fund, sections fund, technology improvement/revenue fund and fixed assets fund.

Use of Estimates — The preparation of the Statement of Chargeable and Nonchargeable Expenses (the "Statement") in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions. Actual results could differ from those estimates. These estimates and assumptions affect the reported amounts of chargeable and nonchargeable expenses during the reporting period.

2. BASIS OF PRESENTATION

The State Bar Act sets the annual membership fee for members of the State Bar. The amount of the annual membership fee, however, is subject to certain adjustments. The United State Supreme Court in *Keller v. State Bar of California*, 496 U.S. 1 (1990) ("*Keller*") held that the State Bar could not use membership fees paid by an objecting member to fund political or ideological activity that was not necessarily or reasonably related to the State Bar's purpose of regulating the legal profession or improving the quality of legal services. The Statement provides the basis for the membership fee. It describes and separates the "chargeable" expenses, which a member must pay as part of the annual membership fees, and the "nonchargeable" expenses, if any, which a member is not required to pay under *Keller*. Determining which State Bar programs and activities are chargeable and nonchargeable requires that judgments be made by the State Bar. In calculating the chargeable and nonchargeable expenses, absolute precision is not expected nor required pursuant to *Chicago Teachers v. Hudson*, 475 U.S. 292, 308 (1986). Expenses included in the Statement are derived from expenses included in the unrestricted general fund (except program costs funded by filing or other fees), the building fund and client security fund. Program revenue represents registration fees for law corporations, limited liability partnerships, and other certification programs; convention income; continuing legal education fees; *CalBar Journal* revenues; and other program revenues that are used to fund the related program expenses.

Effective January 1, 2000, amendments to the State Bar Act provided each member with the option of deducting \$5 from the annual membership fee for lobbying and related activities outside of the parameters established in *Keller* (Cal. Bus. & Prof. Code §6140.05). The amendments also prohibited the State Bar from funding the activities of its Conference of Delegates and the bar sections with mandatory membership fees (Cal. Bus. & Prof. Code §6031.5). In addition to these changes, the Board of Governors, beginning in 2001, provided members the option of an additional \$5 deduction from membership fees for certain other programs. Although reasonable persons may disagree whether some of these programs and activities may be chargeable under the criteria in *Keller*, the Board of Governors has elected to make them optional in their entirety.

Commencing January 1, 2000, the amount of expenses that the State Bar could incur for legislative activity outside of the parameters of *Keller* was restricted by statute to the total revenue collected from those members electing to take the \$5 deduction under Cal. Bus. & Prof. Code §6140.05. Instead of categorizing its programs as within or outside of *Keller*, the State Bar elected in 2001 to restrict the expenses of all of its legislative activity to voluntary funds and will continue to do so. Similarly, the funding of certain other programs (elimination of bias and bar relations) is now limited to voluntary fees. Accordingly, all such expenses will be funded by restricted funds composed of voluntary fees paid at the option of members. Members who do not wish to support these activities may deduct the amounts from their annual membership fees. Like legislative activity, funding of these optional programs is limited to the payments collected from members electing not to take the optional deduction. Therefore, for purposes of the Statement, there were no nonchargeable expenses attributed to mandatory bar dues for the year ended December 31, 2001.

The following is a listing of the major expenses that the State Bar has categorized as chargeable, including a description of the programs or activities performed by category. The classification of a program or expense as chargeable

was based on the standards in *Keller* that have been applied to determine whether an expense was necessarily or reasonably incurred for the purpose of regulating the legal profession or improving the quality of legal services available to the people of the State of California. Nonchargeable expenses, as stated above, will be funded by restricted funds composed of voluntary fees paid at the option of members.

Description of Categories — Chargeable Programs

Discipline — The purpose of the Discipline program is to protect the public by regulating the conduct of California lawyers.

a. Enforcement	\$ 19,954,823
Receive, review and analyze incoming communications which relate to disciplinary inquiries and complaints against attorneys. Investigate allegations of unethical and unprofessional conduct against attorneys who may have violated provisions of the State Bar Act, Rules of Professional Conduct or other standards of professional conduct. Prosecute attorneys in formal disciplinary hearings in the State Bar Court for violations of the State Bar Act or Rules of Professional Conduct. Activities include, as appropriate, the preparation of formal disciplinary pleadings, conduct of formal and informal discovery, and representation of the State Bar as Trial Examiners in the actual hearings and subsequent review proceedings. (Bus. & Prof. Code §§6043, 6044, 6049, 6077, 6078, 6092.5 et seq.)	
b. State Bar Court	\$ 4,556,492
Adjudicate formal disciplinary matters resulting in the final imposition of discipline or, in certain instances involving suspension or disbarment, the recommendation of discipline to the California Supreme Court. (Bus. & Prof. Code §§6086.5, 6086.6; Cal. Rules of Court, rules 952, 953, 954.)	
c. Client Security Fund	\$ 5,869,342
Receive, evaluate and process applications made to the Fund by persons who have suffered monetary losses due to dishonest conduct of lawyers and authorize recovery to eligible clients out of funds collected for this purpose. (Bus. & Prof. Code §6140.5.)	
d. Fee Arbitration	\$ 370,657
Administer a statewide program for arbitrating fee and cost disputes, and arbitrate those disputes that are not within the jurisdiction of an approved local bar association program. (Bus. & Prof. Code §6200.)	
	<u>\$ 30,751,314</u>

Administration of Justice — The purposes of the Administration of Justice program are: (1) to administer the work of the Commission on Judicial Nominees Evaluation as mandated by Government Code §12011.5; (2) to improve the quality and delivery of legal services available to the people of the State; and (3) to aid in the advancement of the science of jurisprudence and improvement of the administration of justice. This program provides specialized professional advice, analysis, studies and information to the judicial, legislative and executive branches of government.

a. Court Reform and Research Projects	\$ 223,888
Provide assistance to State Bar efforts to improve court rules, procedures, structures and processes that affect the quality and delivery of legal services by lawyers to their clients and to coordinate these efforts with the Judicial Council, Administrative Office of the Courts, California Judges Association, California Law Revision Commission and other entities. This includes expenses and staff support to the Standing Committees on Administration of Justice, Appellate Courts, Federal Courts, and Alternative Dispute Resolution. (Cal. Const. Art. VI §6, Bus. & Prof. Code §§6031, 6086.14, Gov. Code §8287.) Although some or all of these functions may be germane under the parameters in <i>Keller</i> , the State Bar has elected to limit the funding to the non-mandatory fees portion of the annual membership fee paid voluntarily by members under Bus. & Prof. Code §6140.05.	
b. Commission on Judicial Nominees Evaluation	\$ 445,828
Evaluate and report to the Governor's Office on the qualifications of judicial candidates whose names have been submitted by the Governor. (Gov. Code §12011.5.)	
	<u>\$ 669,716</u>

Competence and Certification — The Competence and Certification programs include: (1) to provide and promote statewide competence education; (2) to assist others in providing and promoting statewide competence education programs; and (3) to protect the public through the operation of certain certification programs.

a. Professional Competence, Planning and Development	\$ 1,419,989
Maintain and improve the standards of the legal profession to enhance attorney competence through: (1) promulgating and strengthening professional standards to protect the public; (2) assisting members to comply voluntarily with such standards (e.g., Ethics Hotline, California Compendium on Professional Responsibility, Lawyers Personal Assistance Program); and (3) planning and development of programs to enhance attorney competence. (Bus. & Prof. Code §§6076, 6077.)	
b. Certification Programs	\$ 1,071,789
Develop standards for certification programs (e.g., Law Corporations, Limited Liability Partnerships, Practical Training of Law Students, Foreign Legal Consultants, MCLE, Legal Specialist) and efficiently administer such programs. (Bus. & Prof. Code §§6070, 6160, Cal. Rules of Court, rules 958, 983, 988.) For 2002, the certification programs will be transferred to a restricted fund and funded by fees, penalties or other payments authorized by statute or court rule.	
	<u>\$ 2,491,778</u>

Program Development — The purpose of the Program Development program is to provide assistance in the delivery of civil legal services to the public, by working with legal services providers and bar associations to provide a variety of public service programs, including: pro bono legal services programs, lawyer referral services, pro per clinics, community-based resolution centers and programs to include access to the courts. The program also provides limited staff support to the California Young Lawyers Association and to the Standing Committee on Delivery of Legal Services.

a. Legal Services Access	\$ 744,483
Provide technical assistance and support to bar associations and legal services programs to develop or expand the availability of legal services to low- and middle-income people in the State. Program development activity focuses on promoting pro bono public efforts, lawyer referral services ("LRS") and dispute resolution programs.	
b. California Young Lawyers Association	\$ 16,984
Foster a greater understanding of, and encourage interest among, recently admitted and young lawyers in the programs and activities of the State Bar. Provide a forum for the exchange of ideas in order to assist the State Bar in its programs. (Bus. & Prof. Code §§6013, 6013.4.)	
	<u>\$ 761,467</u>

Allocated Administrative Overhead — General and administrative expenses are incurred to provide staff and operational support to all programs and activities of the State Bar in the following areas: human resources; finance; financial planning and analysis; data processing operations and development; printing; word processing; purchasing; membership records and certification; member billing and elections; building management; law library and archives; mail; legal counsel and advice; and the formulation, implementation and administration of policies through the Board of Governors and Executive Offices. The "overhead/interfund allocation" is the share of the administrative costs that are charged to the restricted fund programs for the support provided, using the methodology of the State of California for apportioning and recouping administrative support cost provided by the State's general fund to its special fund programs.

General and administrative expenses are allocated based upon the ratio of the program's expenditures to total program expenditures paid by mandatory dues.	
Communications	\$ 2,167,596
Executive Offices	\$ 1,870,643
General Counsel	\$ 2,331,663
Office of Finance and Financial Planning	\$ 1,332,394
Office of Human Resources	\$ 1,073,807
Office of Administrative Support — Los Angeles	\$ 1,142,820
Office of Support Services — San Francisco	\$ 6,201,127
Office of Real Property (includes lease space cost)	\$ 8,068,831
Overhead/interfund allocation	\$ (9,532,189)
Building Fund	\$ 2,094,095
Total	<u>\$ 16,750,787</u>

3. OPTIONAL DEDUCTIONS

The State Bar has determined that an amount up to \$10 (ten dollars) may be deducted from the 2003 membership fees. This amount includes the \$5 set by the California Legislature for legislative and related activities and \$5 fixed by the Board of Governors of the State Bar for the optional programs.

The deduction is allocated to the following activities:

a. Lobbying

Members who elect to deduct the \$5 from the annual membership fee will not fund legislative proposals that improve the administration of justice, but are outside the parameters of *Keller*. Such lobbying is limited by statute to the amount paid by members who elect not to take the deduction. (Bus. & Prof. Code §6140.05.)

b. Other Optional Programs

Members who elect to deduct the remaining \$5 from the annual membership fee will not fund the elimination of bias and bar relations programs to eliminate bias in the judicial system and legal profession and to increase participation of attorneys who have been under-represented in the administration and government of the State Bar's programs and activities, such as women, ethnic minority, gay, lesbian and disabled attorneys, and will not fund the cost of communicating and maintaining relations with local bars and other voluntary associations.