



The State Bar of California

OPEN SESSION AGENDA ITEM 5.11 JULY 2024 BOARD OF TRUSTEES

DATE: July 18, 2024

TO: Members, Board of Trustees,
Sitting as the Regulation and Discipline Committee

FROM: Melanie Lawrence, Program Director, Office of Professional Support & Client Protection
Bridget Gramme, Special Counsel, Consumer Protection, Admissions, Access & Inclusion

SUBJECT: Request for Approval of Mandatory Fee Arbitration Filing Fee Increase

EXECUTIVE SUMMARY

The Board is requested to approve a filing fee increase for the fee arbitration program from 5 percent of the amount in dispute to 6 percent, increase the minimum fee, and change the maximum fee from a flat \$5,000 to a tiered approach based on the amount in dispute.

This action is consistent with the State Auditor's 2023 recommendation that the State Bar identify any service fees that do not fully cover the costs of providing the service and should increase the fees to the amount necessary to recoup its costs, unless it determines that doing so would limit the public's access to the services.

This item was first presented at the May 2024 Board meeting ([Item 60-2](#)) as discussion only after a local bar association program, an important stakeholder, raised concerns about the impact of the increase on local bar associations. Since then, staff has surveyed local bar associations with fee arbitration programs for feedback. With one exception, the feedback was either positive or neutral. Given the State Auditor's recommendation, staff requests approval of the increase as previously proposed.

RECOMMENDED ACTION

Approve raising the application filing fees for the Mandatory Fee Arbitration program as recommended and provided in Attachment A, Title 3, Division 4, Chapter 2, "Fee Arbitration, Charges and Deadlines."

DISCUSSION

Currently, the filing fees for the State Bar fee arbitration program are 5 percent of the amount in dispute with a minimum of \$50 and a maximum of \$5,000. In 2023 the State Auditor recommended that the State Bar identify any service fees that do not fully cover the costs of providing the service and should increase the fees it identifies to the amount necessary to recoup its costs, unless it determines that doing so would limit the public's access to the services. To help recoup some of the program's operating costs, staff recommends a filing fee increase to 6 percent of the amount in dispute and an increase in the minimum amount to \$100 and a tiered approach to the maximum fee as set forth in Attachment A.

After posting the item in advance of the May 2024 Board meeting, staff received feedback from the Los Angeles County Bar Association (LACBA), with concerns about an increase in the State Bar's filing fees. The concerns included that such an increase would negatively impact local bar fee arbitration programs by encouraging them to increase their fees and that those higher costs could potentially discourage parties from using the programs, negating the use them for the intended purpose of an alternative, lower-cost forum for resolving disputes.

Under Business and Professions Code section 6200(d), the Board must approve local bar association fee arbitration rules, which commonly include program fees.¹ Often, local programs look to the State Bar program rules when considering changes to their own. However, local programs are not required to align with State Bar rules.

Because of LACBA's concern, staff distributed a survey to local bar associations with fee arbitration programs, asking for their input on what impact, if any, a filing fee increase at the State Bar's program would have on their local programs. Bar associations were specifically asked to identify the impact of an increase in State Bar filing fees on their fee arbitration programs. Feedback was also sought regarding the proposed tiered approach to the cap on the maximum fee. The responses are attached hereto as Attachment B.

Of note, the majority of the responses indicated the increase would have no impact on their program or indicated there would be an impact albeit a positive one such as, "increase our revenues and keep our program running." However, LACBA reiterated its prior concern that "no one with high amounts in dispute will use the State Bar program." They further explained that the MFA program is, "designed to be speedy and COST EFFECTIVE not a money maker for the Bar..."

Staff also discussed the proposed increase with the program's Presiding Arbitrator and two Assistant Presiding Arbitrators. Of those, one Assistant Presiding Arbitrator, who is affiliated

¹ In fact, there is an item on this Board meeting agenda from LACBA requesting approval for their own fee increase.

with LACBA, disagrees with the increase. The other two understand the need for the increase and do not disagree with the proposal including the tiered approach.

The program's filing fees have not been increased for over 15 years. As noted in the previous item, the impetus for this proposal is the State Auditor's 2023 recommendation to raise fees on services where the fees do not fully cover operating costs, unless doing so would limit the public's access to services. This proposal will not fully cover operating costs, and certainly will not result in a revenue positive outcome. MFA revenue annually, based entirely on filing fees, is budgeted at \$100,000 for 2024, resulting in a structural deficit for the program of \$696,500. Staff estimate that it would require an 87 percent increase in revenue to completely recoup the program's current total costs. Rather than pursue such a drastic increase, staff is recommending a modest increase impacting all applicants and a tiered approach to the maximum cap resulting in the highest increase in cost being borne by those with the highest-dollar disputes.

The majority of applications for the State Bar's MFA program are for disputed amounts less than \$100,000. In 2023, only 20 applications exceeded \$100,000 in dispute. Thus, based on the proposed increase, the majority of applicants will still pay a maximum of \$5,000. Moreover, applicants who cannot afford the fee, regardless of the amount in dispute, will continue to have the option of a fee waiver if they qualify. In 2023, 19 percent of applicants filed fee waivers. Of those, approximately one-half qualified and were approved in whole or in part.

Importantly, the State Bar's action would have no direct impact on local programs though it may encourage other programs to seek similar increases to recoup their own administrative costs.

PREVIOUS ACTION

May 16, 2024, Board of Trustees Meeting, [Request for approval of Mandatory Fee Arbitration Filing Fee Increase](#)

FISCAL/PERSONNEL IMPACT

The proposed increase in filing fees will result in \$333,000 in additional revenue, an amount that has been incorporated into the 2025 budget forecast.

AMENDMENTS TO RULES

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

None – core business operations

RESOLUTIONS

Should the Board of Trustees, sitting as the Regulation and Discipline Committee concur, it is:

RESOLVED, that the Board of Trustees, sitting as the Regulation and Discipline Committee, approves raising the application filing fees for the Mandatory Fee Arbitration program as recommended and provided in Attachment A, Title 3, Division 4, Chapter 2, “Fee Arbitration, Charges and Deadlines.”

ATTACHMENTS LIST

- A.** Title 3, Division 4, Chapter 2, “Fee Arbitration, Charges and Deadlines”
- B.** Local Bar Association, MFA program survey re: Proposed State Bar filing fee increase