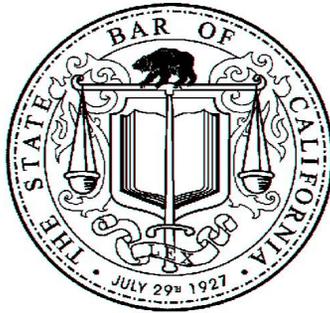


**IN THE SUPREME COURT OF THE STATE OF CALIFORNIA**

**SUPPLEMENTAL SUBMISSION CONCERNING  
METHODOLOGY OF OPTIONS FOR A SPECIAL REGULATORY  
ASSESSMENT TO FUND THE STATE BAR IN 2017**

**S237081**



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**I. INTRODUCTION**

By letter of October 20, 2016, Special Master Justice Lui directed the State Bar of California (“State Bar”) to submit supplemental information to the California Supreme Court in support of the State Bar’s Request for Special Regulatory Assessment filed on September 30, 2016 (“Request”). The Special Master specifically directed the State Bar to submit line-item budgets for all program expenditures for each assessment option presented on page 29 of the Request, including not only for the discipline and public protection functions, but also for the State Bar departments that provide indirect support to those functions and are supported through cost allocation, in order to ensure that the assessment appropriately addresses all costs.

The Special Master encouraged the State Bar to anticipate any new or unique challenges in the coming year that might impact the cost forecasts for the State Bar’s disciplinary or public protection functions. Examples of likely 2017 developments include implementation of the revised Rules of Professional Conduct and development of a new case management system.

The Special Master also directed the State Bar to provide the Court with a sample of the proposed components of the 2017 member fee statement to reflect the various funding options presented, including the statutorily authorized fees and opt-in/opt-out items. The State Bar was asked to provide a legal justification for inclusion of statutory fees (such as the \$25 fee for the Client Security Fund [“CSF”]), requests for donations, opt-ins and opt-outs, in the absence of a fee bill approved by the Legislature pursuant to Business and Professions Code section 4160.<sup>1</sup>

In response to Justice Lui’s letter, this Supplemental Submission Concerning Methodology of Options for Special Regulatory Assessment to Fund the State Bar in 2017 (“Supplemental Submission”) provides a revised analysis of Appendix F of the Request with appendices and a Supplemental Declaration of State Bar Chief Operating Officer Leah Wilson. The Supplemental Submission sets forth a description of the discipline-related functions of the Office of Communications and the California Young Lawyers Association (“CYLA”). It modifies indirect cost calculations and provides a description of both the discipline case management system (“CMS”) and the enterprise resource planning (“ERP”) system, which are included as discipline-related costs.

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<sup>1</sup> All further section references are to the California Business and Professions Code, unless otherwise specified.

Pursuant to Justice Lui's request, this Supplemental Submission addresses the current opt-in and opt-out fees and deductions. It also sets forth the State Bar's justification for the collection of the \$25 statutory fees for the CSF (Section 6140.55), which was previously authorized by the Supreme Court in *In re Attorney Discipline System* (1998) 19 Cal.4<sup>th</sup> 582, as well as a request for a one time additional Court assessment for the CSF.

The Supplemental Submission presents revised calculations for the discipline functions. The direct costs and revised indirect costs for the Office of Chief Trial Counsel ("OCTC") are presented in Table 2 herein, and include positions that will be filled in 2017, such as the Chief Trial Counsel and an attorney with immigration experience to prosecute the unauthorized practice of law ("UPL") complaints. The discipline-related costs also include an option to fund an enforcement monitor, as referenced in the Court's September 8, 2016, letter to the State Bar.

Table 5 herein summarizes the revised funding options for both the discipline functions and the public protection functions. Finally, a sample proposed 2017 member fee statement, which includes a section for a Court ordered assessment and lists the additional statutory fees, is included as State Bar Appendix J.

## **II. SUPPLEMENTAL INFORMATION REGARDING METHODOLOGY FOR OPTIONS FOR A SPECIAL REGULATORY ASSESSMENT**

### **A. Clarification of Discipline vs. Public Protection Related Costs for Specified Programs**

Two State Bar programs comprise activities that can be characterized as related to both discipline and public protection. An effort has therefore been made to differentiate these costs.

#### **1. Office of Communications**

In 2017, the State Bar's Office of Communications will have an increased focus on discipline-related activities. The principal roles of this office are to help Californians understand how to access the resources and support of the State Bar's discipline system, and to ensure that attorneys understand their professional ethical obligations. Creating an awareness of the new ethics rules will be an area of special emphasis as a result of the rules revision process, which is expected to conclude in 2017. The Office of Communications will convey this information through a media relations initiative and with the use of its own digital channels (e.g. website, email newsletter to attorneys, and social media).

Additional discipline-related activities of the Office of Communications will include: (a) working with reporters in the mainstream press to share information about disbarments and other attorney discipline, as well as complaint filing procedures; (b) monthly write-ups of attorney

discipline and Client Security Fund payments in the electronic Cal Bar Journal and social media (for the public and attorneys); (c) promoting and distributing this information online and via media relations; (d) using social media to reach the public about disbarments and other attorney discipline matters, as well as how to file a complaint; (e) revising the State Bar website to make information about the attorney discipline system and rules of professional conduct more accessible, thus helping members of the public better understand their legal rights, how best to identify fraud when attorneys are involved, and how to file complaints or seek other remedies; and (f) improving access to the State Bar's website for those with visual disabilities and for those who are limited to mobile-only or preferred web browsing capabilities.

Based on the above description, an estimated seventy percent (70 percent) of the Office of Communications budget is expected to fall within the attorney discipline function in 2017.

## 2. California Young Lawyers Association

A nexus between CYLA and the State Bar's pro-active discipline functions exists in CYLA's educational programs, all of which are offered for MCLE credit. "The MCLE program in California — a consumer protection measure 'intended to enhance the competency of attorneys practicing law in this state' (*People v. Ngo* (1996) 14 Cal.4th 30, 36, 57 Cal.Rptr.2d 456, 924 P.2d 97) — is a product of legislative action, court

rule, and State Bar regulations. [Fn. Omitted.] In 1989, the Legislature enacted Business and Professions Code section 6070, which required the State Bar to request this Court to adopt a rule of court authorizing the Bar to establish and administer an MCLE program. (Bus. & Prof.Code, § 6070, subd. (a).)” (*Warden v. State Bar* (1999) 21 Cal. 4th 628, 634.)

In 2016, CYLA’s educational activities constituted 13.5 percent of the program’s overall budget. In 2017, the General Fund will also support CYLA activity that focuses on the development of curriculum satisfying the new attorney MCLE requirement going into effect February 1, 2018.

**B. Revisions to Indirect Cost Calculation**

Pursuant to the Special Master’s request, Indirect Costs<sup>2</sup> have been recalculated as follows:

- 1) The Office of the General Counsel (OGC) has been removed from the General Fund cost allocation pool to align the current approach with that employed in the presentation of OGC costs in *In re Attorney Discipline System*, supra, 19 Cal.4th 582, as direct program costs in the various options presented below.

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<sup>2</sup> An explanation of Indirect Programs and Costs as well as the cost allocation methodology can be found in Appendices F (pp. 5-6) and H of the Request.

- 2) The costs of other Indirect Programs (Member Billing, Human Resources, Finance, Information Technology, General Services and Executive Director/Board of Trustees) have been realigned so that 100 percent of their associated General Fund expenses are borne by discipline - versus public protection - related functions.<sup>3</sup>

Table 1 summarizes these changes as related to the discipline functions identified in the State Bar's Request. Additional detail is provided in State Bar Appendix K.

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<sup>3</sup> The Special Master directed the State Bar to reconsider its treatment of Indirect Costs. The State Bar has determined that Member Billing, Human Resources, Finance, Information Technology, General Services and Executive Director/Board of Trustees are appropriately allocated to *discipline programs only*. The departments funded through cost allocation could not reduce staffing if the Court's decision limited assessment funding to discipline programs. As a result, all indirect costs have been allocated to discipline programs.

**Table 1: Summary of Indirect Cost Revisions –  
Impact on Original Discipline Programs**

<b>Original Request Discipline Programs</b>	<b>Original Indirect Cost Allocation</b>	<b>Adjustments</b>	<b>Revised Indirect Cost Allocation</b>
Office of Chief Trial Counsel	\$12,404,600	(\$2,012,100)	\$10,392,500
Office of Probation	\$439,100	(\$72,900)	\$366,200
Fee Arbitration	\$228,000	(\$30,900)	\$197,100
State Bar Court	\$4,366,600	(\$255,300)	\$4,111,300
Office of Professional Competence	\$797,700	(\$80,200)	\$717,500
Office of Member Records and Compliance	\$1,057,700	(\$137,200)	\$920,500
Non-Programmatic Member Billing	\$1,486,000	-	\$1,486,000
<b>Indirect Cost Totals, Original Discipline Programs</b>	<b>\$20,779,700</b>	<b>(\$2,588,600)</b>	<b>\$18,191,100</b>

**C. Identification of Anticipated Increased Funding Needs for the Discipline System in 2017**

As requested, funding needs for key information technology initiatives for the discipline system are identified in this Supplemental Submission. Specifically, a portion of costs related to both the CMS and the ERP systems are included as part of the presentation of special regulatory assessment options for consideration by the Court.

The primary computer systems used by OCTC and the State Bar Court (“SBC”) to manage their caseloads are well past their useful life spans. The software supporting these critical functions was custom-written in the late 1980’s in a proprietary IBM Report Program Generator

language. The current system, known as the AS400, has become a barrier to the efficient and effective management of OCTC and the SBC. The system is currently:

- Inflexible in its configuration making it:
  - difficult to update in response to new legislative mandates and other reporting requirements resulting in sub-optimal transparency and accountability;
  - difficult to add new data fields to capture information; and
  - difficult to extract data and run reports that are required by the Legislature and essential to the effective tracking of cases and protection of the public.
- incompatible with modern IT industry standards and technology platforms;
- incapable of supporting essential modern functions such as integration with web sites;
- inefficient for users who must navigate irrelevant and redundant screens to find and enter data required for the management of cases; and
- costly to maintain as the pool of IT developers who can work with the code that runs the AS400 continues to shrink.

The State Bar's annual maintenance and software subscription contract for its ERP system expired in December 2014. Since that time, the

State Bar has been unable to fund the necessary upgrade required to support robust and fully integrated financial, procurement, and human resources functions. Challenges with the State Bar’s current ERP, which rely on outdated and fractured platforms and reporting tools, have been evidenced by a number of negative audit findings in the last couple of years, as well as difficulties that the State Bar had in responding to a recent inquiry from the Assembly. The anticipated reporting requirements associated with the present regulatory assessment request accelerate the need for a fully integrated financial system with powerful reporting tools to deliver key insights and meaningful analysis for cost control, management decision making and legislative reporting. An estimated 72.54 percent of the ERP upgrade will directly support of the State Bar’s discipline functions.

Together, these Information Technology initiatives require \$3.48 million in one-time funding. A breakdown of these costs is provided as State Bar Appendix L.

**D. Issues Raised by Legislative Activities and Elimination of Bias/Bar Relations Opt-Outs**

The State Bar’s September 30 Request sought authorization to add \$10 to the assessment to support two separate \$5 deductions taken against the mandatory member fee: Legislative Activities (§ 6140.05) and Elimination of Bias/Bar Relations (Board of Trustees Resolution, 2000). Pursuant to the Special Master’s instruction to review “opt-in” and “opt-

out” amounts, the Request is modified to reflect only the \$5 deduction, known as the Legislative Activities deduction mandated by Section 6140.05. Because the statutorily mandated Legislative Activity opt-out reduces the assessment, the State Bar seeks authority to add \$5 to the assessment authorized by the Court.

**E. The Client Security Fund**

Section 6140.55 provides:

*The board may increase the annual membership fees fixed by it pursuant to Section 6140 by an additional amount per active member not to exceed forty dollars (\$40), and the annual membership fees fixed by it pursuant to Section 6141 by an additional amount per inactive member not to exceed ten dollars (\$10), in any year, the additional amount to be applied only for the purposes of the Client Security Fund and the costs of its administration, including, but not limited to, the costs of processing, determining, defending, or insuring claims against the fund.*

This provision allows the Board of Trustees of the State Bar to add an amount up to \$40 to the annual statement for deposit into the CSF.

The purpose of the CSF is “to relieve or mitigate pecuniary losses caused by the dishonest conduct of active members of the State Bar.” (§ 6140.5, subd. (a).) In order to qualify for reimbursement from the fund, the applicant must establish a loss of property or money that came into the hands of an active member of the bar through dishonest conduct, while the member was serving as an attorney or in fiduciary capacity. (Rules of the State Bar, rule 3.430(A), (B).) “Dishonest conduct” includes “[t]heft or

embezzlement of money” and “the wrongful taking or conversion of money or property....” (Rules of the State Bar, rule 3.431(A).) Section 6140.5 provides that upon payment to an applicant, the State Bar becomes statutorily subrogated (to the extent of payment) to the rights of the victim/applicant against the person/persons who caused the pecuniary loss, and may bring an action to enforce those rights within three years of such payment. (*Id.*, subd. (b); *State Bar of California v. Statile* (2008) 168 Cal.App.4th 650, 662.) As a condition of continued practice, the attorney prompting the CSF payment must reimburse the fund or, where the member has resigned with charges pending or been suspended or disbarred, as a condition of reinstatement of membership. (§ 6140.5, subd. (c).) The rules unconditionally state that an attorney must repay the fund for any reimbursement made, with simple interest plus processing costs. (Rules of the State Bar, rule 3.451.)

The need for additional CSF funding has been well-documented, including by the California State Auditor’s May 2016 report:

*To reduce the length of time that victims of dishonest lawyers must wait for reimbursement from the Client Security Fund, the State Bar should continue to explore fund transfers, member fee increases, and operating efficiencies that would increase resources available for payouts.*

(see: <https://www.auditor.ca.gov/pdfs/reports/2015-047.pdf>).

In July 2015, State Bar staff completed a comprehensive analysis of the CSF outlining the need for additional funding taking into account

program revenue, the pending applications inventory, and annual filing trends. That report, *Overview of the Client Security Fund and Need for Additional Funding*, is provided as State Bar Appendix M. After outlining a number of options, the report's final recommendation was to implement an ongoing active member CSF fee increase of \$10, and a temporary three-year \$15 increase, resulting in an increase in the overall fee from \$40 to \$65.

Until 1987, CSF's annual assessment varied from \$10 to \$5 to \$0. In 1988, legislation changed the maximum assessment level from \$25.00 to \$40.00. Except for the years 2002 through 2005, when it was reduced to \$35.00, the assessment has remained at \$40.00 to date for active attorneys and \$10.00 for inactive attorneys. These assessments and the accumulated surplus allowed the Fund to pay 100 percent of all qualifying losses to date.

In 2009, however, the average yearly applications to the Client Security Fund tripled and remained well above the historic average through 2013. For example, in 2008 the Fund received 825 new applications while in 2009 the Fund received 3,028 new applications. The increase was due to the loan modification fraud schemes perpetrated by some California attorneys. Unfortunately, due to this increase, the yearly revenue to the Fund has been less than the likely payouts on yearly applications since 2009.

Annual revenue generated by the current \$40 fee totals approximately \$7.6 million. After taking into account program administrative costs, \$6 million remains for victim payments. The \$25 increase proposed by the 2015 report would increase annual revenue to \$12.2 million. After accounting for program administrative costs, nearly \$10 million would be available for victim payments. The combination of ongoing and one-time funding that the \$25 increase represents was projected to allow the program to both address its current application inventory, estimated at over 5,000 and reflecting a total one-time funding need of \$18.9 million, and timely process new applications, which were estimated to generate \$7.3 million in ongoing annual funding need.

Subsequent to report finalization last year, the Board of Trustees acted to address the pending applications inventory by directing a transfer of reserve funding from the State Bar's Legislative Activities and Lawyer Assistance Program funds to the CSF.<sup>4</sup> This \$2 million transfer reduced the pending outstanding inventory balance from \$18.9 to approximately \$16.9 million.

As of June 30, 2016, and as reflected in State Bar Appendix N, the CSF application inventory totaled 5,060. As of that date, 550 new

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<sup>4</sup> As the Court is aware, concerns have been raised regarding the appropriateness of the Lawyer Assistance Program transfer, which amounted to \$1.6 million of the \$2 million total. The Board will consider transfer reversal at an upcoming meeting.

applications had been received and 777 paid; if the same rate is projected for the balance of the year, the 2016 year-end application inventory is estimated to total 4,600. At this pace of inventory reduction, it would take over 10 years to eliminate the inventory, assuming no upswing in new applications. While the assumptions and exact projections in the 2015 report must be updated, the pressing need to increase CSF funding to address the sizeable application inventory has been extensively documented. As a result, the State Bar seeks authorization for a \$25 CSF fee increase. This one-time increase, which aligns with that recommended by the 2015 report, would amount to \$4.66 million in additional funding. Based on the average 2016 payout amount of \$5,340, this increase would allow for over 900 inventory applications to be processed in 2017. Should the Court approve this request, the State Bar will work with the Special Master during 2017 to update the 2015 report and its methodology in preparation for an additional request for ongoing CSF stabilization funding to be submitted to the Legislature as part of the 2018 fee bill process.

In *In re Attorney Discipline System, supra*, 19 Cal.4<sup>th</sup> 582, 590 - 591, the Court specifically noted that the State Bar was authorized to collect the CSF fee even though Section 6140 - the statutory provision by which the Legislature fixed the basic member dues - had been vetoed. "After the Governor's veto, the bar remained authorized by statute to collect \$77 in

annual bar dues in 1998, of which \$40 expressly is reserved for the Client Security Fund and the costs of its administration (§ 6140.55)...” (*Ibid.*)

The Court noted that it may not interfere with the Legislature’s intention to fund the CSF program: “Tampering with the existing resources collected and allocated to the bar pursuant to valid existing legislation, particularly funds designated for uses other than discipline, would not be deferential to the Legislature’s traditional and continuing role in this area.” (*Id.* at p. 617.) It was also noted that none of the provisions affecting the system’s structure or operations has been repealed. (See *id.* at p. 620).<sup>5</sup>

Thus, because none of the provisions affecting the State Bar’s structure or operations has been repealed, it is appropriate for the State Bar

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<sup>5</sup> The Court underwent the same analysis for the additional fee for the discipline system under Section 6140.6, finding that the statutes creating the existing State Bar disciplinary system remained in full force and effect and none of the provisions affecting the system's structure or operations had been repealed. (*In re Attorney Discipline System, supra*, 19 Cal.9<sup>th</sup> 582, 620.) The Court specifically stated that the State Bar was authorized to collect the discipline system fund:

At present, the bar is authorized by statute to collect \$27 per year from each attorney to fund a disciplinary system. (§§ 6140.6, 6140.9.) These statutes, however, expressly indicate that the \$27 fee was intended to be imposed in addition to the basic annual membership fee ordinarily authorized by section 6140. There is no indication the Legislature contemplated that the supplemental \$27 fee, by itself, would be sufficient to fund an effective disciplinary system.

(*Id.* at p. 606, fn. 11.)

to collect all current statutorily required fees, including that for CSF, in deference to the Legislative's tradition role in setting statutory fees.

This Supplemental Submission additionally seeks from this Court inclusion in the assessment of an amount in excess of the \$40 allocated to the CSF. As described above, the CSF is not fulfilling its mission to compensate victims of attorney wrongdoing. This Court may order an increase in the mandatory CSF fee under its inherent authority over the attorney profession.

A properly funded CSF provides public protection. As stated in *In re Attorney Discipline System, supra*, 19 Cal.4<sup>th</sup> 582, 609, "... the objective of the discipline system is not punishment of the attorney, but protection of the public. . . . Civil and criminal court actions also would not protect future clients adequately from potentially damaging conduct by attorneys. Many attorneys who are disciplined do not have the funds to pay judgments against them (which is why the Legislature created the Client Security Fund)." (*Ibid.*)

The fact that the Legislature chose to statutorily authorize fees for CSF does not prevent the Court from also allocating funding for CSF under the separation-of-powers doctrine. "Indeed, as a leading commentator on the separation-of-powers doctrine has noted: 'From the beginning, each branch has exercised all three kinds of powers. [Citation.] [¶] It is commonplace to observe that both executive and judicial officials routinely

exercise quasi-legislative authority in establishing general policies and promulgating general rules for the governing of affairs within their respective spheres. [Citation.] The exercise of such quasi-legislative authority, even when the policy decision that is made by the executive or judicial entity or official is one that could have been made by the Legislature, has never been thought to violate the separation-of-powers doctrine. [Citations.]’ (*Davis v. Municipal Court* (1988) 46 Cal.3d 64, 76–77, 249 Cal.Rptr. 300, 757 P.2d 11.)” *In re Attorney Discipline System*, *supra*, 19 Cal.4<sup>th</sup> 582, 586.

### **III. REVISED OPTIONS FOR FUNDING**

#### **A. Modified Discipline Functions**

Table 2 below reflects *In re Attorney Discipline System* Programs, discipline-related functions of the Office of Communications and CYLA, and the presentation of OGC costs as a stand alone program rather than as part of Indirect Costs. In addition, all other Indirect Costs have been disaggregated and are reflected as associated with each discipline program.

**Table 2: Modified Discipline Functions**

<b>Program</b>	<b>Direct Costs<sup>6</sup></b>	<b>Revised Indirect Costs</b>	<b>Revised Total Costs</b>	<b>CPM</b>
Office of Chief Trial Counsel	\$30,062,000	\$10,392,500	\$40,455,400	\$216.83
Office of Probation	\$939,900	\$366,200	\$1,306,100	\$7.00
Fee Arbitration	\$679,400	\$197,100	\$876,500	\$4.70
State Bar Court	\$7,571,900	\$4,111,300	\$11,683,200	\$62.62
Office of Professional Competence	\$1,857,500	\$717,500	\$2,575,000	\$13.80
Office of Member Records and Compliance	\$2,546,500	\$920,500	\$3,467,000	\$18.58
Office of Communications (70%)	\$852,400		\$852,400	\$4.57
CYLA (13.5%)	\$23,500		\$23,500	\$0.13
Office of General Counsel <sup>7</sup> (71.29%)	\$3,456,600		\$3,456,600	\$18.53
Member Billing	-	\$1,486,000	\$1,486,000	\$7.96
<b>Total</b>	<b>\$47,990,600</b>	<b>\$18,191,100</b>	<b>\$66,181,700</b>	<b>\$354.72</b>

**B. Revised Public Protection Functions**

Costs associated with those aspects of the State Bar’s previously characterized public protection functions (see Appendix F, p. 8 of the

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<sup>6</sup> All costs reflect 2016 budgeted figures unless otherwise noted.

<sup>7</sup> The 71.29 percent of OGC costs referenced here that are allocated to the General Fund; the remaining balance of OGC costs are allocated to non-General Fund programs, including Admissions and Sections.

Request) as modified to exclude discipline-related components of the Office of Communications and CYLA, are provided in the table below:

**Table 3: Public Protection Functions**

<b>Program</b>	<b>Direct Costs</b>	<b>CPM</b>
Commission on Judicial Nominees Evaluation	\$678,700	\$3.64
Commission on Access to Justice	\$21,800	\$0.12
Center on Access to Justice	\$1,233,100	\$6.61
Office of Communications (30%)	\$365,300	\$1.95
CYLA (86.5%)	\$149,700	\$0.80
<b>Total</b>	<b>\$2,448,600</b>	<b>\$13.12</b>

**C. Non-Mandatory Member Fees Available to Support Discipline Functions**

As detailed in the Request, the State Bar’s 2016 budget includes approximately \$13.4 million in revenue comprised of non-mandatory member fees that is available to support its disciplinary functions.<sup>8</sup> This

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<sup>8</sup> As explained in the Request, there are other historical funding sources potentially available to support the State Bar’s discipline functions. The State Bar’s arguments against using these other sources as cost offsets are outlined in the Request (Appendix F, pp. 11-12). In addition, and as specifically related to Affinity and Insurance Program revenue, a funding source’s alignment with the State Bar’s associational, versus public protection, activity, should also inform the Court’s decision as to whether or not the State Bar should rely on this funding to offset core discipline function costs. The State Bar’s position is that these types of revenue sources are particularly uncertain given ongoing debate regarding the State Bar’s maintenance of a hybrid regulatory and associational structure. The State Bar’s recommendation not to offset discipline function costs with Affinity and Insurance Program revenue in particular is best understood in this context.

non-mandatory member fee revenue detail is provided as State Bar

Appendix O.

Application of the \$13.4 million to offset the costs of Modified Discipline Functions is shown below in Table 4. To facilitate the Court’s review of the State Bar’s Request at the program level, the \$13.4 million has been proportionally distributed against the discipline functions reflected in the table.

**Table 4: Modified Discipline Functions – Non Mandatory UGF Revenue Offset**

<b>Program</b>	<b>Direct Costs</b>	<b>Revised Indirect Costs</b>	<b>Offset by Proportional Share of \$13.4M Revenues</b>	<b>Revised Net Costs</b>	<b>CPM</b>
Office of Chief Trial Counsel	\$30,062,000	\$10,392,500	(\$8,191,100)	\$32,264,300	\$172.92
Office of Probation	\$939,900	\$366,200	(\$264,400)	\$1,041,700	\$5.58
Fee Arbitration	\$679,400	\$197,100	(\$177,400)	\$699,100	\$3.75
State Bar Court	\$7,571,900	\$4,111,300	(\$2,365,500)	\$9,317,700	\$49.94
Office of Professional Competence	\$1,857,500	\$717,500	(\$521,400)	\$2,053,600	\$11.01
Office of Member Records and Compliance	\$2,546,500	\$920,500	(\$702,000)	\$2,765,000	\$14.82
Non-Departmental: Member Billing Overhead		\$1,486,000	(\$300,900)	\$1,185,100	\$6.35
Office of the General Counsel	\$3,456,600		(\$699,900)	\$2,756,700	\$14.87
Office of Communications	\$852,400		(\$172,600)	\$679,800	\$3.64
CYLA	\$23,500		(\$4,800)	\$18,700	\$0.10

Revised Total	\$47,990,600	\$18,191,100	(\$13,400,000)	\$52,781,900	\$282.90
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**D. Revised Assessment Option**

The following table replaces Table 11 of the Request. It reflects the modifications outlined above, as well as those components of Table 11 that remain constant. Line-item budgets associated with each option are provided as appendices.<sup>9</sup>

**Table 5: Revised Assessment Options**

	<b>Modified Discipline Functions</b>			<b>Corresponding Line Item Budget Provided As</b>
<b>Base Cost Per Member</b>	\$282.90			State Bar Appendix P1
<b>Possible Add-Ons</b>				
Workforce Planning Only	\$9			State Bar Appendix P2
Implement Backlog Reduction	to 180 <u>days</u> \$53	to 197 <u>days</u> \$46	to 243 <u>days</u> \$26	State Bar Appendix P: 3, 4, 5
Implement Workforce Planning AND Backlog Reduction	to 180 <u>days</u> \$56	to 197 <u>days</u> \$48	to 243 <u>days</u> \$28	State Bar Appendix P: 6, 7, 8

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<sup>9</sup> Note that the differences between 6A-H all correlate with increased OCTC salary and benefit costs; the Court’s decision to support both/either Workforce Planning or backlog reduction efforts via the assessment will translate directly to increased funding for OCTC personnel.

Appoint Enforcement Monitor <sup>10</sup>	\$2.5	State Bar Appendix Q
Discipline-System CMS	<b>\$12.86</b>	State Bar Appendix L
Discipline Related ERP	<b>\$5.84</b>	State Bar Appendix L
Legislative Activities	<b>\$5.00</b>	N/A
<b>CPM Range, Discipline</b>	\$283-\$365	

Expanding the scope of the assessment to authorize public protection functions would require an additional **\$13.12** per member, as detailed in Table 3 above. A line item budget corresponding to the public protection funding option is provided as State Bar Appendix R. The modified CPM Range, Public Protection, totals \$296-\$378.

#### **IV. SAMPLE FEE STATEMENT**

A sample fee statement is provided as State Bar Appendix J. The top portion of the statement includes blank spaces for the Court’s ordered assessment amount. It also reflects the other statutory fees, including additions and deductions, that are collected with the members fees. The

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<sup>10</sup> Footnote 18 on page 17 of Appendix F to the Request referred to the \$2.00 fee authorized by Section 6140.9 for a discipline monitor in 1988, but incorrectly stated the fee was for a discipline monitor during the time of *In re Attorney Discipline System*. The *In re Attorney Discipline System* Court ordered a \$2.00 fee to pay the fees and expenses of a Special Master: “The remaining \$1.56 is imposed in order to pay for the fees and expenses related to the special master and his activities. (Cf. § 6140.9 [imposing a fee of \$2 per active member per year to pay for the discipline monitor, and, after expiration of the relevant contract, to be applied to fund disciplinary services].)” (*In re Attorney Discipline System, supra*, 19 Cal. 4th 582, 624.)

remaining items will remain constant regardless of the level of assessment approved.

**V. CONCLUSION**

The State Bar appreciates this opportunity to present revised funding options that more accurately reflect the costs related to the discipline and public protection functions and respectfully requests the Court to order an active membership fee assessment that will adequately fund the State Bar. This funding level ranges from \$283-\$378 per member, based on the Court's decisions as related to the discipline versus public protection scope of the assessment and each specific add-on funding option. In addition, the State Bar seeks the authority to increase the assessment by \$25 for the CSF to enable applications inventory reduction.

Dated: October 31, 2016

Respectfully submitted,

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By: \_\_\_\_\_  
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WORD COUNT CERTIFICATE PURSUANT TO  
CALIFORNIA RULE OF COURT 8.520(C)(1)

Pursuant to rule 8.520(c)(1) of the California Rules of Court,  
I hereby certify that this brief contains 4,937 words. I have relied on the  
word count of the computer program used to prepare the brief.

Dated: October 31, 2016

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VANESSA L. HOLTON