

SUPREME COURT COPY

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN RE ATTORNEY DISCIPLINE SYSTEM;)
CALIFORNIA RULES OF COURT, RULE 9.9)
_____)

S237081

REPORT OF SPECIAL MASTER
REGARDING STATE BAR'S REQUEST FOR
RELEASE OF SURPLUS FUNDS



SUPREME COURT
FILED

JAN 10 2018

Jorge Navarrete Clerk

Deputy

PREPARED BY

Elwood Lui, Associate Justice
Court of Appeal of the State of California
Second Appellate District, Division One
300 South Spring Street
2nd Floor, North Tower
Los Angeles, CA 90013

January 10, 2018

On January 5, 2018, I received a letter from Kevin W. Harper, the State Bar of California's Interim Chief Financial Officer, requesting the release of the remaining balance in the Special Master's Attorney Discipline Fund (Special Master's Fund) to support the attorney discipline system in 2018. (His letter is appended to this report as Attachment A.) I see no reason to deny this request.

As the Court may recall from my last quarterly report, the State Bar's 2017 spending within the specified components of the attorney discipline system funded in part by the Court's special regulatory assessment (the P-2 programs) fell well below budgeted expectations largely due to slower than expected hiring in the Office of Chief Trial Counsel (OCTC).¹ As a result, the Special Master's Fund ended the year with a balance of nearly \$3.5 million.

Looking forward, the State Bar expects to register a deficit of approximately \$5.5 million in its unrestricted General Fund in 2018 due to a number of factors detailed in Mr. Harper's letter, including a loss of approximately \$3.5 million in indirect cost allocations attributable to the separation of the State Bar's Sections. (See pp. 2-3.) At the same time, at least three discipline-related initiatives in 2018 currently lack sufficient sources of funding: (1) the additional internal staffing needed to support implementation of the active attorney fingerprinting rule at an estimated cost of \$650,085; (2) an estimated \$2 million in unfunded costs related to the implementation of a new case management system to support OCTC, SBC, and Probation; and (3) an estimated \$1.5 million in investments needed for the continued expansion of OCTC. The State Bar assures us that the remaining balance of the Special Master's Fund, if released, will be used exclusively to offset the costs of discipline-related initiatives.

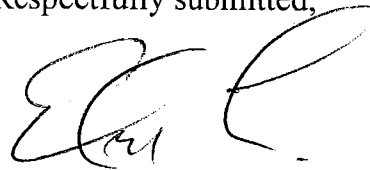
¹ The Court's November 17, 2016 order and Rules of Court, rule 9.9 specified 10 components of the State Bar's attorney discipline system that would be funded through the special regulatory assessment: (1) OCTC, including efforts to implement workforce plan recommendations from the National Center for State Courts (NCSC); (2) the State Bar Court (SBC); (3) the Office of Probation (Probation); (4) the Mandatory Fee Arbitration program (MFA); (5) the Office of Professional Competence (OPC); (6) the Office of General Counsel (OGC); (7) the Office of Member Records and Compliance (MRC); (8) Member Billing (MB); (9) the discipline-related activities of the California Young Lawyers Association (CYLA); and (10) the activities of the Office of Communications (OC) in support of the discipline system. I will refer to these as the "P-2 programs," which corresponds to Appendix P-2 to the State Bar's Supplement Submission Concerning Methodology of Options for a Special Assessment to Fund the State Bar (Supplemental Submission) that contained a set of preliminary 2017 budgets for these programs. OGC and MB are funded through indirect cost allocations. The other eight P-2 programs are directly funded through disbursements from the Special Master's Fund and other General Fund revenues.

To review, as of December 31, 2017, total deposits to the Special Master's Fund were approximately \$66.7 million.² Of this amount, I disbursed \$63.2 million to the State Bar to support the attorney discipline system throughout the year, leaving a year-end balance in the Special Master's Fund of approximately \$3.5 million. While I have not received final cost data for December 2017, I am anticipating total P-2 program spending in 2017 will approximate \$62.8 million. Thus, it appears all of the funds exclusively earmarked for the attorney discipline system—the Court-ordered assessment and the statutorily imposed discipline fee—will have been used for their intended purpose.

While the remaining amounts attributable to the inactive member fees, late fees and penalties are normally considered unrestricted General Fund revenues which may be used for disciplinary or non-disciplinary purposes, the State Bar in its Request for Special Regulatory Assessment submitted to the Court in September 2016 pledged exclusive use of these funds to support the discipline system. Thus, following issuance of my final fourth quarter report to the Court, I believe it is reasonable and appropriate to release the balance of these funds to the State Bar for the purpose of supporting the discipline-related initiatives outlined in Mr. Harper's letter.

I would welcome any feedback the Court wishes to provide and would be pleased to submit any further information that it may require in order to address the State Bar's request.

Respectfully submitted,



Elwood Lui

January 10, 2018

Attach.

² This amount is attributable to four revenue sources: (1) the Court-ordered special regulatory assessment (\$297 per active member) generated approximately \$56.1 million; (2) the statutorily imposed discipline fees (\$25 per member) totaled approximately \$5.9 million; (3) inactive member fees (\$65 per inactive member) generated approximately \$3.2 million; and (4) dues late fees and penalties totaled approximately \$1.5 million. There are also additional amounts attributable to interest earned on the account.

ATTACHMENT A (35 pages)



THE STATE BAR OF CALIFORNIA

OFFICE OF FINANCE

180 HOWARD STREET, SAN FRANCISCO, CALIFORNIA 94105-1639 TEL: (415) 538-2000 FAX: (415) 538-2389

January 3, 2018

Justice Elwood Lui
Court of Appeal
Second Appellate District, Division One
300 S. Spring Street
Los Angeles, CA 90013

Re: Request for Surplus Funds

Dear Justice Lui:

The State Bar requests release of the remaining balance of the Special Master's Attorney Discipline Fund ("Special Master's Fund") as of December 31, 2017. The surplus balance in the Special Master's Fund on that date is estimated to be as follows:

Deposits into the Fund	\$66,644,000
Disbursements to State Bar	(63,228,071)
Interest earned	<u>77,327</u>
Projected Balance in Fund at December 31, 2017	<u>\$ 3,493,256</u>

The projected balance in the Special Master's Fund on December 31, 2017 results primarily from vacant positions in the Office of the Chief Trial Counsel (OCTC). The pace of hiring for vacant positions was slow early in the year and has been increasing. The number of open positions in OCTC has fallen from a high of 50 in April 2017, due to voluntary separations effective March 31, 2017, to 23 as of December 26, 2017. Internal promotions that have been made to address these vacancies have resulted in cascading vacancies, meaning that we are in a near constant state of recruitment. Although it would be faster to fill positions by external recruitment, we are choosing to build our staff through appropriate promotions.

Although the State Bar has not incurred expenses at the rate required to use all amounts in the Special Master's Fund by December 31, 2017, there are significant expenses and revenue losses anticipated in 2018 related to the attorney discipline system that will need to be funded. These include:

Attorney Fingerprinting – Pursuant to the Supreme Court's request, the State Bar has recently circulated a proposed rule for comment that will require all active licensed attorneys to submit or resubmit fingerprints to the State Bar. While the State Bar will ask the Court to issue a rule that requires attorneys to pay for the fingerprinting costs directly, the Bar will incur additional costs as

related to the staffing that will be needed to process fingerprinting results. Based on the lack of precedent for the imposition of a new fingerprinting requirement for all licensed attorneys within a short timeframe, the number of new staff that will be needed is not precisely known. Instead, the State Bar has generated initial estimates ranging from 9 to 28 staff depending on many factors including the number of attorneys charged and convicted of crimes, the number of these cases that have gone unreported, the severity of the crimes, the number of attorneys who fail to comply with the new mandate, and the number of attorneys who contact the Bar to inquire about the policy or request an accommodation. Given other pressures on the Bar's fiscal position for the budget year, the 2018 budget assumes only four new staff positions (2 in the Office of Chief Trial Counsel, 1 in the Office of General Counsel, 1 in the Office of Research & Institutional Accountability) at a cost of \$650,085. Funding for any additional staffing needs will be included in a 2018 budget amendment as well as the 2019 budget. See attached Board of Trustees Agenda Item, *Proposed California Rule of Court Regarding Fingerprinting of Active Licensed Attorneys – Request for Public Comment*, for further description.

Case Management System – The State Bar is currently implementing a new Case Management System for OCTC, State Bar Court, and the Office of Probation. Unfunded costs through December 31, 2018 are estimated to be approximately \$2.0 million.

Investment in OCTC – The State Bar continues to increase resources to OCTC to assist in the pursuit of its public protection objectives. The total number of employees in OCTC has grown from 211 employees as of December 31, 2016 to 219 as of the end of 2017 with a total of 253 OCTC positions funded in the 2018 budget. OCTC's total budget will grow by approximately \$1.5 million for 2018 compared to 2017.

Impact of 2018 General Fund Deficit on Attorney Discipline System – The following is a summary of the State Bar's adopted 2018 budget for the General Fund:

General Fund net balance <i>(as of January 1, 2018)</i>	<u>\$74,465,000</u>
Estimated 2018 revenues	73,539,000
Estimated 2018 expenses	(80,299,000)
Interfund transfer to General Fund	<u>1,217,000</u>
Estimated 2018 General Fund deficit	<u>(5,543,000)</u>
General Fund net balance <i>(as of December 31, 2018)</i>	<u>\$68,922,000</u>

Approximately half of the 2018 General Fund deficit is due to structural factors and the remaining half is attributable to one-time factors. Significant factors affecting the 2018 budget deficit include the following:

- One structural aspect of the deficit is attributable to mandatory license fee levels set by the Legislature. These fees are the Bar's primary General Fund revenue source, and fee levels have not increased in seventeen years.
- Under the 2018 fee bill, the State Bar's Sections will be spun off to a newly created entity, the California Lawyers Association. As a result, approximately \$1.7 million of indirect costs that were formerly paid by the Sections now must be funded by other Bar departments through increased indirect cost allocations. The bulk of this increased cost burden will be borne by the attorney discipline system. To provide individual Bar departments with sufficient time to "right-size" their budgets through a combination of revenue increases and expense reductions, a one-time charge of \$1.7 million to the General Fund will be used to fund these indirect costs in 2018.
- Another one-time factor affecting the 2018 deficit results from the portion of the 2018 fee bill that requires the State Bar to remit revenue received from affinity programs to the California Bar Foundation. Under the fee bill, revenue received from insurance programs shall be split 50 percent to the California Lawyers Association (the new Sections entity) to assist with their transition, 25 percent to qualified legal services projects and support centers, and 25 percent to support discipline functions of the State Bar or the Client Security Fund. (This formula changes for 2019, eliminating the share that goes to the California Lawyers Association.) Accordingly, the Bar will lose \$1.6 million General Fund revenue in 2018 that in prior years was available to finance the attorney discipline program.
- The 2018 budget includes an economic package proposed to the SEIU union during collective bargaining. The total cost of this package for 2018 is estimated to be \$3.5 million. This includes: (a) a 5% raise for all employees not at the top of their range (\$631,000); (b) adjusting certain salaries upward to meet the minimum salary ranges in accordance with recent classification and compensation study (\$377,000); (c) a one-time lump sum payment to union employees for converting from 36.25 to 40 hour work week (\$1.5 million); and (d) an offset by annual savings for switching health plans to the CalPERS (\$1 million).

It is important to note that the 2018 budget assumes that all the amounts in the General Fund are received. Even with this assumption, the 2018 budget requires the \$5,543,000 deficit to be funded from General Fund reserves.

Given the foregoing, the State Bar requests that the unused amounts in the Special Master's Fund at the end of 2017 be released to be used solely to offset these additional costs necessary to support the attorney discipline system in 2018.

Sincerely,



Kevin W. Harper
Interim Chief Financial Officer

OPEN SESSION
BOT AGENDA ITEM NO. 701

NOVEMBER 2017

DATE: November 3, 2017
TO: Members, Board of Trustees
FROM: State Bar Staff
SUBJECT: Proposed California Rule of Court Regarding Fingerprinting of Active Licensed Attorneys – Request for Public Comment

EXECUTIVE SUMMARY

This agenda item requests the Board of Trustees to authorize a 45-day public comment period for a proposed court rule to implement a fingerprinting requirement for active licensed attorneys under the recent amendments to Business and Professions Code section¹ 6054, effective January 1, 2018. Pursuant to the California Supreme Court's recent directive, the proposed rule requires all active licensed attorneys to submit or resubmit fingerprints to the Department of Justice by a set deadline and to pay the fingerprint processing and furnishing costs in connection with such submissions.

BACKGROUND

On October 20, 2017, Tani G. Cantil-Sakauye, Chief Justice of California, sent a letter to State Bar President Michael Colantuono and Executive Director Leah Wilson, regarding Senate Bill ("SB") No. 36's recent amendment to section 6054 authorizing the State Bar of California ("State Bar") to require attorneys to submit or resubmit fingerprint records to the California Department of Justice ("DOJ") in order to receive subsequent arrest notification for these individuals. The Court's letter is Attachment 1. The full text of section 6054, as amended by SB 36, is as follows:

(a) State and local law enforcement and licensing bodies and departments, officers and employees thereof, and officials and attachés of the courts of this state shall cooperate with and give reasonable assistance and information, including the providing of state summary criminal history information and local summary criminal history information, to the State Bar of California or any authorized representative thereof, in connection with any investigation or proceeding within the jurisdiction of the State Bar of California, regarding the admission to the practice of law or discipline of attorneys or their reinstatement to the practice of law.

(b) The State Bar of California shall require that an applicant for admission or reinstatement to the practice of law in California, or may require a member to submit or resubmit fingerprints to the Department of Justice in order to establish

¹ Unless otherwise stated, all section citations are to the Business and Professions code.

the identity of the applicant and in order to determine whether the applicant or member has a record of criminal conviction in this state or in other states. The information obtained as a result of the fingerprinting of an applicant or member shall be limited to the official use of the State Bar in establishing the identity of the applicant and in determining the character and fitness of the applicant for admission or reinstatement, and in discovering prior and subsequent criminal arrests of an applicant, member, or applicant for reinstatement. The State Bar shall notify the Department of Justice about individuals who are no longer members and applicants who are denied admission to the State Bar within 30 days of any change in status of a member or denial of admission. All fingerprint records of applicants admitted or members reinstated, or provided by a member, shall be retained thereafter by the Department of Justice for the limited purpose of criminal arrest notification to the State Bar.

(c) The State Bar shall request from the Department of Justice subsequent arrest notification service, as provided pursuant to Section 11105.2 of the Penal Code, for applicants to, and members of, the State Bar.

(d) If required to be fingerprinted pursuant to this section, a member of the State Bar who fails to be fingerprinted may be enrolled as an inactive member pursuant to rules adopted by the board of trustees.

(e) The State Bar shall report to the Supreme Court and the Legislature by March 15, 2018, regarding its compliance with the requirements of this section.

While section 6054 authorizes the State Bar to require submission or resubmission of attorney fingerprints to the DOJ, it does not obligate the State Bar to do so. The statute is also silent in regard to how the State Bar may implement attorney fingerprinting requirements, including with respect to a compliance timeframe and who should bear the costs associated with the processing and furnishing of these submissions. The statute also removes language mandating that the State Bar bear costs associated with the processing of applicant fingerprints.

The Supreme Court's October 20, 2017, letter obligates the State Bar to require attorney submission of fingerprints to the DOJ. It states: "requiring fingerprints of all applicants and active members is a critical component of public protection and strengthens the State Bar's discipline system." See Attachment 1. In its letter, the Court directs the State Bar "to consider and present to the [C]ourt any proposed court rules that may be appropriate to facilitate implementation of the fingerprinting requirement for all State Bar applicants and all active attorney members." *Id.*

In connection with the statutory changes, State Bar staff has been re-evaluating its current policies and procedures for applicant fingerprinting, and determining what processes are necessary for the submission of active attorney fingerprints to the DOJ and the subsequent receipt of criminal information. This evaluation includes an analysis of anticipated operational impact on the State Bar, including a review of staffing needs. Accordingly, this agenda item provides the Board with an overview of these analyses and a proposed court rule requiring all active licensed attorneys² to submit or resubmit fingerprints to the DOJ. The proposed rule also includes a timeframe for compliance with this requirement and a requirement that licensed attorneys bear all costs associated with fingerprint submission.

² State Bar applicants are already required to be fingerprinted pursuant to section 6054.

Pursuant to State Bar Board Book Rule 1.10, staff recommends that the Board request a 45-day public comment period on the proposed rule.

DISCUSSION

I. The State Bar's Subsequent Arrest Notification Contracts with the DOJ

As reported to the Board earlier this year, staff determined that it was necessary for the State Bar to enter into a contract for Subsequent Arrest Notification ("SAN") in order to comply with section 6054's fingerprint retention requirements. Prior to SB 36, section 6054 required that only State Bar applicants be fingerprinted and that such fingerprint records "be retained thereafter for the limited purpose of criminal arrest notification." Although the State Bar was requiring applicants for admission to be fingerprinted, the State Bar had not entered into a contract for the DOJ to retain these fingerprints. As such, the State Bar was not receiving SANs for any applicant after admission to the State Bar.³

Upon realizing the error, the State Bar entered into a SAN contract with the DOJ on June 28, 2017, effective July 1, 2017 (the "Applicant Contract"). Attachment 2 is the Applicant Contract. Pursuant to the Applicant Contract, the DOJ is now retaining applicant fingerprint records in order to notify the State Bar of subsequent arrests of those individuals.

The State Bar subsequently entered into a second contract with the DOJ for active licensees (the "Licensee Contract"). Attachment 3 is the Licensee Contract.

Although the Licensee Contract currently provides for SAN services for all licensed attorneys, the DOJ is unable to provide arrest notification for the vast majority of this population. This is because fingerprint records previously submitted by licensed attorneys as part of their moral character application were not retained by the DOJ because no contract was previously in place permitting such retention.

As also previously explained to the Board, the State Bar has only retained fingerprint records of a small subset of applicants who submitted fingerprints using hard copy fingerprint cards within the past three years. Of these applicants, approximately 1,500 are now active licensed attorneys. Following the execution of the Licensee Contract, the State Bar submitted the fingerprint records of these attorneys to the DOJ⁴. Thus, pursuant to the Licensee Contract, the DOJ will provide SAN services for these attorneys. However, the only way for the State Bar to receive arrest notification for all other active licensed attorneys is for those individuals to submit new fingerprint records to the DOJ to be retained pursuant to the Licensee Contract.

³ The term "arrest notification" includes notification of both arrests and the dispositions thereof. See Cal Pen. Code § 11105.2(a).

⁴ The State Bar has also submitted the hard copy fingerprint cards of approximately 1,500 applicants whose applications are still pending, so that they can be retained pursuant to the Applicant Contract.

II. Operational Analysis

A. Fingerprint Processing and Subsequent Arrest Notification Review and Response Procedures

In order to handle the influx of criminal information that will flow from the State Bar's two contracts with the DOJ, staff has re-evaluated its current processes and created certain new procedures.

1. New Procedures Related to State Bar Applicants

Pursuant to the Applicant Contract, effective July 1, 2017, enrollment in the SAN system now occurs as a byproduct of the criminal background check run on all applicants to the State Bar. Thus, following an applicant's submission of fingerprints to the DOJ, the Office of Admissions ("Admissions") receives electronic notification through a secure File Transfer Protocol ("FTP"), indicating whether a criminal history for the applicant was found. When a criminal history is found, Admissions receives this information electronically through the same secure FTP. Admissions will continue to receive notification of any criminal information until the applicant is admitted to the State Bar. While it is not anticipated that a large number of applicants will pick up additional arrests, charges, or convictions during the limited amount of time that most applicants are in this status, there are applicants who spend years attempting to pass the bar exam and whose moral character evaluation will need to be reconsidered by Admissions when new information comes to light as a result of SAN. Admissions has yet to receive any SAN hits on applicants who were fingerprinted since July 1, 2017, and staff is working to develop guidelines governing the review of this information when it is eventually received.

Another process for Admissions to manage is the notification to the DOJ when an applicant is denied admission to the State Bar. The State Bar is obligated to notify the DOJ when an applicant is denied admission so that the DOJ can destroy those individuals' fingerprints. See Cal Pen Code § 11105.2(f); section 6054, as amended by SB 36. An applicant is denied admission to the State Bar if he or she has not been admitted to the State Bar within three years of submitting a moral character application, provided there is no approved extension. An applicant who fails the bar exam may retake the exam within this time period without needing to be re-fingerprinted each time he or she registers for the exam.

On October 3, 2017, the Committee of Bar Examiners approved an applicant fingerprint processing protocol requiring Admissions to inform the DOJ when SAN is no longer required for individual applicants whose positive moral character determination has expired, their application has been abandoned, or who are otherwise ineligible for admission. Admissions staff will review moral character applications monthly to determine which applicants have applications meeting these requirements. The names of those applicants will then be transmitted to the DOJ through a formal "No Longer Interested" notification form each month.

2. New Procedures Related to Currently Licensed Attorneys

To effectuate the submission of licensed attorney fingerprints to the DOJ and the receipt of SAN for licensed attorneys, staff plans to upload a pre-populated and individualized Live Scan form on each attorney's My State Bar Profile page. These forms will include essential information for appropriate fingerprint routing: a "Mail Code" and "Applicant Type" agreed upon by the DOJ and the State Bar.

After an attorney has submitted fingerprints through the Live Scan process using this pre-populated form, the DOJ will run both a California and a national (FBI) background check and transmit that data to the State Bar. Receipt of the information from the DOJ will trigger the automatic population of the State Bar's records and compliance database indicating that the attorney has complied with the fingerprinting requirement and is now registered in the SAN system. Background checks that contain criminal history information will be routed to a secure terminal in the Office of Research and Institutional Accountability ("ORIA"), where dedicated staff will use specified decision rules to determine what additional steps, if any, need to be taken.

These decision rules, which have not yet been finalized, will address two different groups of licensed attorneys:

a. *Attorneys whose criminal record preceded admission to the State Bar.* If the date of the criminal history information *preceded* the completion of the moral character determination, ORIA staff will research the case to determine if the information found in the criminal background check was already disclosed as part of the attorney's moral character application. If the information was already disclosed, then the criminal history record will be destroyed and no further action will be taken. If the information was *not* already disclosed, staff will forward the record to Admissions for further analysis to determine what action, if any, should be taken.

b. *Attorneys whose criminal record occurred after admission to the State Bar:* If the date of the criminal history information follows the attorney's admission to the State Bar, ORIA staff will research the case to determine if the information found in the criminal background check was already disclosed to the Office of Chief Trial Counsel ("OCTC"). If the information was already known to OCTC, then the criminal history record will be destroyed and no further action will be taken. If the information in the criminal history was *not* already known to OCTC, then ORIA staff will forward the record to OCTC for further analysis to determine what action, if any, should be taken.

It will also be necessary to remove attorneys from the SAN system when they transition to certain statuses. Similar to the process being developed in Admissions, staff is working to develop a monthly routine for identifying attorneys who permanently resign from the State Bar, are disbarred, or die in order to submit this information to the DOJ through the "No Longer Interested" form⁵.

B. Implementation Costs

The costs associated with the fingerprinting of active licensed attorneys are outlined below. The State Bar will also incur costs associated with the implementation of the above processes and procedures. Estimates of these costs are based on the number of applicants and active licensed attorneys shown below in Table 1.

⁵ Cal Pen Code § 11105.2(d) requires the State Bar to immediately notify the DOJ when a "license or certification is revoked" and "when [an] applicant may no longer renew or reinstate the license or certificate."

Table 1

Licensed Attorneys in California	
Active	189,167
Inactive	57,434

Average Annual Number of Moral Character Applications	
	7,807

1. Fingerprint Processing and Furnishing Costs

It costs \$32 for the DOJ to process fingerprint records and an additional \$17 for the FBI background check, for a total cost of \$49 per individual. See <https://oag.ca.gov/sites/all/files/agweb/pdfs/fingerprints/forms/fees.pdf>. Prior to the recent amendments to section 6054, “[A]ll costs of providing criminal history information to, and the processing of fingerprints for, the State Bar, except for print furnishing and encoding, as required by this section, shall be borne by the State Bar.” SB 36 removes this language from section 6054, leaving the statute silent as to the responsibility for fingerprinting costs for applicants and licensed attorneys.

Applying the costs of fingerprint processing to all active licensed attorneys in California would result in a cost of approximately \$9.27 million. See Table 2.

Table 2

Cost of Enrolling Active Attorneys in SAN System	
DOJ & FBI Background Checks (per attorney)	\$49
Costs for 189,167 Active Attorneys	\$9,269,183

In addition the costs for processing, there is a cost for the actual fingerprint “furnishing.” This is a term used for the process performed by the service center that physically takes fingerprint images and submits them to the DOJ, using either Live Scan technology (California residents) or hard copy fingerprint cards (out-of-state residents). Historically, applicants have been required to pay these costs.

A review of fingerprint servicing locations in the State of California indicates that, depending on location, these services range in cost from \$5 through \$100 with an average cost of \$33. See <https://oag.ca.gov/fingerprints/locations> (listing service locations by county and the costs charged at each location). While many sheriff and police departments offer these services for \$5 (for example, the Lassen County Sheriff’s Department and Mariposa County Sheriff’s Department), many other departments charge much higher amounts. For example, the Richmond Police Department charges \$59, the Pinole Police Department charges \$50, and the Contra Costa Sheriff’s Department charges \$35. Certain jail facilities, such as the Mono County Jail, provide free fingerprint services.

Using the average cost of \$33 per fingerprint, the total cost of fingerprint furnishing for licensed attorneys is \$6.24 million dollars. See Table 3.

Table 3

Cost of Fingerprint Furnishing

Fingerprint "Furnishing" Cost (average per attorney)	\$33
Total Cost for Fingerprinting 189,167 Active Attorneys	\$6,242,511

Combined, the total cost of fingerprint furnishing plus the cost of conducting DOJ and FBI background checks on all active licensed attorneys in the State of California is approximately \$15.51 million. As discussed in more detail below, staff proposes that a court rule mandate that licensed attorneys bear these costs.

2. Anticipated Staffing Needs

While the costs of background checks and fingerprint furnishing are straightforward, calculating the staffing needs for implementing this policy requires additional information, much of which needs to be estimated. The rate at which attorneys are actually charged and convicted of crimes, the number of these cases that have gone un-reported, and the severity of the crimes are all unknown. Nor is it known how many attorneys will fail to comply with a fingerprinting requirement, need their status changed for such failure to comply, will contact the State Bar to inquire about the policy, or will request an extension or other accommodation.

Attachment 5 provides detailed lists of the functions and tasks that staff anticipate will need to be undertaken and the number of anticipated additional positions. Rather than calculating a single estimate, a range including a low, medium, and high estimate is provided for each of nine departments of the State Bar that will be impacted by this policy.

The detailed task and time estimates in Attachment 5 suggest a need for new staff that could be as few as 9 Full Time Equivalent (FTE) staff on the low end, and as many as 29 FTE on the high end. A number of the key parameters used to generate these estimates are summarized immediately below:

- The relevant number of charges and convictions for calculating new workload is not the total but, rather, the number of *previously undisclosed* criminal charges and convictions, i.e., *net* of those already reported;
- The rate of involvement in the criminal justice system for attorneys is assumed to be:
 - greater than current rate of criminal complaints in the State Bar's discipline system (.00122);
 - less than the rate of arrests for the general adult population in California (.042); and
 - greater than the rate for physicians (.00303)⁶, in part because attorneys experience alcohol dependence at a rate over twice that of physicians.⁷
- For initial implementation, the *annual* arrest rate needs to be multiplied by a factor reflecting the years of criminal activity that has gone un-reported. Approximately twenty seven (27) years have lapsed since the legislation mandating SAN. 27 is used as the

⁶ This is based on reporting by the Medical Board of California.

⁷ See Patrick R. Krill, JD, LLM, Ryan Johnson, MA, and Linda Albert, MSSW, "The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys," *Journal of Addiction Medicine*, Volume 10, Number 1, January/February 2016.

multiplier for the high-end estimates of the number of arrest records that will need to be reviewed; 10 is used as the multiplier for the low-end estimates, and 20 is used as the multiplier for the middle-range estimates. On an ongoing basis, this multiplier will not be necessary.

- Not all attorneys will come into the system at the same time. If the policy is implemented over two years, all of the annual estimates need to be cut in half to account for the introduction into the system of half of the attorney population each year.

The implications of these assumptions are as follows:

- At twice the rate of arrests for physicians (.00606), the annual number of arrests for half of the attorney population (95,000) is 576;
- Subtracting the number of criminal conviction cases reported in 2016 (232), the *net* number of annual arrests for half of the attorney population is 344; and
- Estimating that over the last 27 years some proportion of the new arrests are those of attorneys who had already been arrested previously, the low-end estimate of arrest records that will need to be reviewed is 3,437, the middle-range estimate is 6,874, and the high-end estimate is 9,280.

Table 4

Estimated Staffing Need by State Bar Department (Full Time Equivalent Staff – FTE)	Low	Medium	High
Office of the Chief Trial Counsel	3.95	7.85	10.58
State Bar Court	0.58	1.11	1.48
Office of Probation	1.64	3.23	4.34
Office of Admissions	0.35	0.64	0.85
Attorney Regulation and Consumer Resources ⁸	0.32	0.57	1.08
Call Center	0.31	0.57	1.10
Information Technology (fixed estimate, no range)	0.76	0.76	0.76
Office of General Counsel	0.70	2.65	6.27
Office of Research & Institutional Accountability	0.81	1.56	2.09
Totals	9.42	18.94	28.55

Given the uncertainty inherent in many of the parameters that are necessary for estimating the workload, State Bar staff proposes adding nine FTE, consistent with the low end of the range, with the specific allocation to be determined at a later date and the possibility of revisiting the need for staff as implementation moves forward.⁹

⁸ Formerly known as Member Records and Compliance

⁹ The 2018 budget only accounts for four FTE. This is due to a combination of financial constraints, the fact staff anticipates that the workload will grow over time, and the assumption that a conservative approach can be modified over time.

In addition to the detailed worksheets provided in Attachment 5, below is a narrative summary of the major functions for which additional resources will be needed in different departments of the State Bar.

- Additional Information Technology resources to:
 - finalize the design of, build, and maintain the new interface for the secure FTP between the DOJ and the State Bar;
 - re-design the interface between databases in Admissions and those in Attorney Regulation and Consumer Resources, and to provide resources to attorneys through their My State Bar Profile web page;
 - develop processes and maintain the system for re-routing SAN notifications from Admissions to ORIA when applicants to the State Bar become attorneys; and
 - develop new fields, codes, and data transfer routines for State Bar records on attorneys documenting compliance with the fingerprint requirements and the registration of licensed attorneys in the SAN system;
- Additional resources in ORIA to review background checks and route results to the appropriate department;
- Additional resources in Attorney Regulation and Consumer Resources to implement the notification to licensed attorneys of the new policy, respond to correspondence regarding the policy, develop and implement a system of reminder notifications, implement administrative sanctions for attorneys who fail to comply, release the sanctions when compliance is completed, and compile reports of attorneys who resign, are disbarred or die, for transmission to the DOJ to remove from the SAN system;
- Additional resources in Admissions to review background checks that contain information that licensed attorneys failed to disclose on their moral character application and to compile names of applicants whose positive moral character determination has expired, their application has been abandoned, or who are otherwise ineligible for admission, for transmission to the DOJ to remove from the SAN system;
- Additional resources in OCTC to review background checks that contain criminal charge or conviction information not previously disclosed by licensed attorneys or reported by either superior courts or prosecuting attorneys and to prosecute in appropriate cases;
- Additional resources for the State Bar Court to adjudicate cases that OCTC pursues related to criminal charges and convictions uncovered through the re-fingerprinting process and SAN system;
- Additional resources for the Office of Probation to monitor compliance with the terms of probation imposed upon attorneys who failed to disclose criminal histories; and,
- Additional resources for the Office of General Counsel for any legal work associated with the implementation of the fingerprinting requirement.

III. Proposed California Supreme Court Rule

A. Language of Proposed Rule

1. Licensed Attorney Fingerprinting

Each active licensed attorney of the State Bar for whom the State Bar does not currently have fingerprint images shall, pursuant to the procedure identified by the State Bar, submit fingerprint images to the Department of Justice for the purpose of obtaining criminal offender record information regarding state and federal level convictions and arrests.¹⁰ Inactive licensed attorneys for whom the State Bar does not have fingerprint images must submit fingerprint images to the Department of Justice prior to seeking active status.

The State Bar shall request from the Department of Justice subsequent arrest notification service for its active licensed attorneys, pursuant to Business and Professions Code section 6054.

2. Implementation Schedule

The Board of Trustees of the State Bar must develop a schedule for implementation of subsection (a) that requires all active licensed attorneys for whom the State Bar does not have fingerprint images to submit fingerprints to the Department of Justice by December 1, 2019.

3. Fingerprint Submission and Processing Costs

All costs of providing criminal history information to and the processing of fingerprints for, the State Bar, including print furnishing and encoding, as required by section 6054, shall be borne by the licensed attorney.

The State Bar will cover the DOJ and FBI processing costs for licensed attorneys who have been granted a fee scaling or fee waiver for annual membership fees pursuant to State Bar Rule 2.15(A) or 2.16(C)(3)(c). These attorneys will pay for all third party print furnishing costs.

Attachment 4 is the full text of the proposed rule.

¹⁰ The proposed rule is limited to only those active licensed attorneys the State Bar does not have fingerprint images for because, as discussed above, the State Bar has already submitted the fingerprint records of approximately 1,500 active licensed attorneys, in addition to the fingerprint records of out-of-state applicants whose State Bar admission is still pending.

B. Policy Analysis

1. All Licensed Attorneys Must Submit or Resubmit Fingerprints By December 1, 2019, on a Schedule Designated by the Board of Trustees

As recognized in the Court's October 20, 2017 letter, requiring fingerprints of all applicants and active members is a "critical component of public protection and strengthens the State Bar's discipline system." Although there are certain criminal reporting requirements for licensed attorneys, courts, and prosecutors, an evaluation of the data reported to the State Bar suggests significant underreporting by licensed attorneys. For example, simply comparing the raw numbers reported by attorneys to the numbers reported by superior courts and prosecuting attorneys, the State Bar found that on average the number of charges attorneys reported was less than half the number of convictions reported by the courts.

Because the specific reporting requirements differ between those charges that attorneys are required to self-report and the convictions that courts are required to report, this discrepancy may be attributed to the differences in the reporting requirements. However, looking more closely at court reported convictions, State Bar staff found that out of 32 felony convictions reported by the courts over a three year time period, 29 of these cases had no corresponding record of a self-report by the attorney of the charges, despite the attorney's obligation to do so pursuant to section 6068(o)(5). Similarly, comparing specific cases where prosecuting attorneys reported filing felony charges against a licensed attorney revealed that that less than half of these cases had been self-reported by the attorney.

Of course, there is also no accurate way to determine whether courts and prosecutors are adequately reporting charges and convictions to the State Bar. Thus, utilization of the automated SAN process through the DOJ will vastly improve the reliability and validity of the data on criminal charges and convictions of licensed attorneys in California.

The proposed rule requires the Board to adopt an implementation schedule with a deadline of December 2019. The Board is in the best position to evaluate State Bar workload and coordinate with the relevant State Bar departments, in order to determine the best use of State Bar resources. The December 1, 2019 deadline provides an almost two year window for active attorneys to be fingerprinted on a set schedule.

2. Licensed Attorneys Should Bear the Cost of Fingerprint Submission, With Cost Reductions for Financial Hardship

SB 36 amends section 6054 to eliminate the language requiring the State Bar to pay for the costs of fingerprint processing of applicants.¹¹ The statute is silent as to whether the licensed attorney must pay for the costs of submission or resubmission of fingerprint to the DOJ, including processing costs. The proposed rule requires licensed attorneys to bear all costs associated with the submission of fingerprints to the DOJ, including print furnishing costs. This means that the attorney will pay the print furnishing costs directly to the vendor at the time he or

¹¹ The proposed rule only applies to costs for licensed attorneys. Staff is not proposing any changes to the current process for applicant fingerprints. Currently, applicants pay third party furnishing costs, and the State Bar pays for DOJ and FBI processing costs. This status quo approach will not result in any new costs to the State Bar as related to the fingerprinting process itself.

she is fingerprinted. The \$49 processing costs will be reflected through an increase in the attorney's fee statement.

The rule also provides that licensed attorneys who have been granted reductions in their annual membership fees based on financial hardship have the same reductions applied to fingerprint processing costs. State Bar rule 2.15(A) provides "fee scaling" for "[a]n active member who has a total gross annual individual income from all sources of less than \$40,000." State Bar rule 2.16(c)(3)(2) permits the Secretary to waive up to \$1,000 in annual membership fees if the member "has a total gross annual household income from all sources of \$20,000 or less."

There are currently 1,184 licensed attorneys who have been granted fee scaling pursuant to rule 2.15(A), and 271 licensed attorneys who have been granted a fee reduction pursuant to rule 2.16(c)(3)(2). As these attorneys will still need to be re-fingerprinted, the State Bar will have to cover the full DOJ and FBI processing costs. This will result in a projected total cost to the State Bar of approximately \$71,295.00.

Attorneys who have been granted these reductions must still pay the third party vendor furnishing costs.

a) Financial Burden on the State Bar if Required to Bear Costs

The projected total cost (processing and furnishing costs) for all active licensed attorney fingerprints to be submitted to the DOJ would be approximately \$15.51 million. If the cost were to be borne by the State Bar, and member fees were not increased to cover these costs, funding would need to be available from the State Bar's General Fund or Admissions Fund. The General Fund accounts for spendable resources that can be used to support most aspects of the State Bar's operations. The Admissions Fund accounts for fees and expenses related to administering the bar examination and other requirements for admission to the practice of law in California. Money in other funds is restricted via statute, bond covenants or similar external restrictions, and is therefore not available to pay fingerprinting costs.

The amount of available funding the State Bar has in the General Fund and Admissions Fund to pay fingerprinting costs can be determined looking at two alternative measures: (1) Reserves, a short-term measure, identifies the availability of cash and other current assets that can be used to pay liabilities in the near future and (2) Fund balance, a long-term measure, calculates the financial condition of the fund, considering all assets and liabilities incurred to date. Reserves and fund balance for the General Fund and Admissions Fund projected through December 31, 2017 follows (in thousands):

	<i>Reserve Amount</i>	<i>Minimum Required Reserve</i>	<i>Available Reserve</i>	<i>Total Fund Balance</i>	<i>Less FB Restricted or Invested in Capital Assets</i>	<i>Available Fund Balance</i>
General Fund	\$21,442	\$15,178	\$12,264	\$82,225	\$(104,433)	\$(22,208)
Admissions Fund	3,465	2,796	3,465	3,465	-	3,465

The reserve amount above represents working capital (current assets minus current liabilities and amounts that are non-spendable, restricted or committed). The required reserve represents the Board of Trustees' policy that all funds carry a minimum reserve representing at least two months of annual expenses.

Total fund balance above represents the fund's total assets minus total liabilities. Available fund balance represents the spendable portion of the fund balance. The General Fund's total fund balance is substantially less than the reserve amount because non-current assets (primarily capital assets) exceed non-current liabilities (primarily pension liability). Of the General Fund's \$82.2 million projected total fund balance, \$104.4 million is not available, resulting in a negative \$22.2 million of available fund balance. The unavailable fund balance is composed of capital assets and revenues restricted for the Legal Services Trust, Bank Settlement, Legal Specialization Lawyers Assistance Program, Justice Gap and Equal Access programs.

The available reserve and available fund balance for the General Fund and Admissions Fund are expected to further decline in 2018 by approximately \$6.8 million and \$240,000, respectively, according to the State Bar's 2018 preliminary budget. The Admissions Fund is projected to fall below the Board of Trustees' minimum reserve requirement of two months operating expenses by approximately \$322,000 at the end of 2018.

In addition to the reserves discussed above, the State Bar is projecting a current year savings (projected as approximately \$3,047,000 as of August 31, 2017) of funds administered by a Special Master overseeing an assessment fund to support the State Bar's discipline operation. The State Bar could request that the Special Master allow this savings to be used to offset a portion of estimated fingerprinting costs. However, this would represent only a small percentage of the total costs necessary to pay for the fingerprinting of all active attorneys. Furthermore, there is no new funding available to offset the staffing costs, described above. As such, any current year savings could be applied to these new staffing needs.

b) Other Entities Shift the Full Cost of Fingerprint Resubmission to Licensees

Requiring licensees to pay the cost of submitting or resubmitting fingerprints to the DOJ, including in circumstances where fingerprints were previously submitted, is in line with the procedures of various other licensing entities. See 16 California Code of Regulations ("CCR") § 2010.05 (requiring veterinarians to submit fingerprints for the purpose of conducting criminal records searches "if an electronic record of the submission of fingerprints no longer exists or was never created" and that "the licensee shall pay any costs for furnishing the fingerprints and conducting the searches."); 16 CCR § 1132 (dental hygienists); 16 CCR § 2517.5 (vocational nurses); 16 CCR § 1399.419.2 (acupuncturists); 16 CCR § 2575.5 (psychiatric technicians); 16 CCR § 37.5 (accountants).

There are also similar regulations that contain identical language regarding the submission of fingerprints in the event the fingerprints "do not exist," but do not specify who will bear the costs for such submission. See *e.g.*, 16 CCR § 1399.722 (requiring podiatrists to submit a full set of fingerprints to the DOJ if, "regardless of the date of initial licensure", "an electronic record of the submission of fingerprints no longer exists."); 16 CCR § 4120 (requiring applicants for renewal of occupational therapy license to submit fingerprints to the DOJ if fingerprints had not been previously submitted or for whom a record of submission of fingerprints no longer exists); 16 CCR § 1419 (same requirement for renewal of registered nurses).

These regulations were adopted pursuant to statutes authorizing licensing boards to adopt regulations necessary to properly regulate their profession. See Bus. & Prof. Code §§ 4808, 2404, 1906, 2841.1, 4933, 4504, and 5010. As such, the boards of these entities determined that, in the interest of public protection, it was necessary to require the re-submission of licensee fingerprints in certain circumstances. See *e.g.*, Bus. & Prof. Code § 2842 ("protection of

the public shall be the highest priority for the Board of Vocational Nursing and Psychiatric Technicians of the State of California in exercising its licensing, regulatory, and disciplinary functions.”).

Notably, these regulations require licensees to pay costs associated with submission of fingerprint records, even if they previously submitted fingerprints with their initial licensing application. These regulations were adopted to ensure that the DOJ and/or FBI had fingerprint records for all current licensees. As with other California licensing entities, the State Bar endeavors to ensure that the DOJ has fingerprint records of all its licensees in order to effectively regulate the profession and protect the public.

FISCAL/PERSONNEL IMPACT

See Discussion Section, II.B.

RECOMMENDATION

RESOLVED, that the Board of Trustees authorizes staff to make available for a 45-day public comment period, the proposed rule to the California Supreme Court included as Attachment 4 to this agenda item.

ATTACHMENT(S) LIST

- ATTACHMENT 1 - October 20, 2017 Letter from the California Supreme Court
- ATTACHMENT 2 - June 28, 2017 Contract with DOJ
- ATTACHMENT 3 - August 28, 2017 Contract with DOJ
- ATTACHMENT 4 - Text of Proposed Rule to the California Supreme Court
- ATTACHMENT 5 - Detailed Workload / Staffing Estimates

ATTACHMENT 1



Supreme Court of California

350 McALLISTER STREET
SAN FRANCISCO, CA 94102-4797

TANI G. CANTIL-SAKAUYE
CHIEF JUSTICE OF CALIFORNIA

(415) 865-7060

October 20, 2017

Michael G. Colantuono, President, Board of Trustees
Leah Wilson, Executive Director
State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: State Bar Fingerprinting

Dear Mr. Colantuono and Ms. Wilson:

As you know, Senate Bill No. 36 amended Business and Professions Code section 6054 to authorize the State Bar of California to require any applicant for admission and any current member of the State Bar to submit or resubmit fingerprints to the Department of Justice in order to establish the applicant's identity and to determine whether the applicant or member has a record of criminal conviction in this state or elsewhere. Such fingerprint records must be retained by the Department of Justice for the limited purpose of criminal arrest notification to the State Bar. Requiring fingerprints of all applicants and active members is a critical component of public protection and strengthens the State Bar's discipline system. Accordingly, now that Governor Brown has signed Senate Bill No. 36, the State Bar is directed to consider and present to the court any proposed court rules that may be appropriate to facilitate implementation of the fingerprinting requirement for all State Bar applicants and all active attorney members.

Sincerely,

A handwritten signature in cursive script that reads "T. Cantil-Sakaue".

Tani G. Cantil-Sakaue

cc: Hannah-Beth Jackson, Chair of the Senate Judiciary Committee
Mark Stone, Chair of the Assembly Judiciary Committee

ATTACHMENT 2



CONTRACT FOR SUBSEQUENT ARREST NOTIFICATION SERVICE

Department of Justice
Bureau of Criminal Information and Analysis
P.O. Box 903417
Sacramento, CA 94203-4170

The agency listed below is authorized to receive state summary criminal history information from the files of the Department of Justice (DOJ) for employment, licensing, or certification purposes. This agency further requests that fingerprint transactions submitted for this purpose be retained in DOJ's files for **California only** subsequent arrest notification service pursuant to section 11105.2 of the California Penal Code. **Fingerprint submissions received before the effective date of this contract will not be retained by the California Department of Justice.**

AGENCY NAME: State Bar of California

AGENCY ADDRESS: 180 Howard Street

CITY: San Francisco

STATE: CA

ZIP CODE: 94105

ORI NUMBER: (If Applicable) A1104

CONTACT PERSON(S): Dag MacLeod

CONTACT PERSON(S) TELEPHONE: +1 (415) 538-2102

Please retain the following authorized categories:

- ALL EMPLOYEES ALL VOLUNTEERS
- ALL LICENSES, CERTIFICATIONS, OR PERMITS
- OTHER: (specify) _____

**Effective July 1, 2017 for all
Fingerprints Submissions for
Mailing Code A05878**

This agency certifies that, to its knowledge, there is no statute or regulation prohibiting this notification and that all requirements for criminal record security and privacy of individuals will be met. This agency will notify the Bureau of Criminal Information and Analysis when it no longer has a legitimate interest in a subject, as required by section 11105.2 of the California Penal Code. The agency agrees to immediately return any subsequent arrest notification received from DOJ for any person unknown to the agency.

Leah T. Wilson 6/28/17
 Signature of Agency Representative Date

Leah T. Wilson
 Print Name

COO
 Title of Agency Representative

FOR DOJ USE ONLY:

Approved Not Authorized

 Signature of DOJ Representative

 Effective Date

ATTACHMENT 3



CONTRACT FOR SUBSEQUENT ARREST NOTIFICATION SERVICE

Department of Justice
Bureau of Criminal Information and Analysis
P.O. Box 903417
Sacramento, CA 94203-4170

The agency listed below is authorized to receive state summary criminal history information from the files of the Department of Justice (DOJ) for employment, licensing, or certification purposes. This agency further requests that fingerprint transactions submitted for this purpose be retained in DOJ's files for **California only** subsequent arrest notification service pursuant to section 11105.2 of the California Penal Code. **Fingerprint submissions received before the effective date of this contract will not be retained by the California Department of Justice.**

AGENCY NAME: State Bar of California

AGENCY ADDRESS: 180 Howard Street

CITY: San Francisco

STATE: CA

ZIP CODE: 94105

ORI NUMBER: (If Applicable) A1104

CONTACT PERSON(S): Dag MacLeod

CONTACT PERSON(S) TELEPHONE: +1 (415) 538-2102

Please retain the following authorized categories:

ALL EMPLOYEES ALL VOLUNTEERS

ALL LICENSES, CERTIFICATIONS, OR PERMITS

State Bar of California Licenses: B&P 6054

OTHER: (specify) _____

This agency certifies that, to its knowledge, there is no statute or regulation prohibiting this notification and that all requirements for criminal record security and privacy of individuals will be met. This agency will notify the Bureau of Criminal Information and Analysis when it no longer has a legitimate interest in a subject, as required by section 11105.2 of the California Penal Code. The agency agrees to immediately return any subsequent arrest notification received from DOJ for any person unknown to the agency.

Leah Wilson

Signature of Agency Representative

8/28/17

Date

Leah Wilson

Print Name

COO

Title of Agency Representative

FOR DOJ USE ONLY:	
<input type="checkbox"/> Approved	<input type="checkbox"/> Not Authorized
_____ Signature of DOJ Representative	
_____ Effective Date	

ATTACHMENT 4

1. Licensed Attorney Fingerprinting

Each active licensed attorney of the State Bar for whom the State Bar does not currently have fingerprint images shall, pursuant to the procedure identified by the State Bar, submit fingerprint images to the Department of Justice for the purpose of obtaining criminal offender record information regarding state and federal level convictions and arrests. Inactive licensed attorneys for whom the State Bar does not have fingerprint images must submit fingerprint images to the Department of Justice prior to seeking active status.

The State Bar shall request from the Department of Justice subsequent arrest notification service for its active licensed attorneys, pursuant to Business and Professions Code section 6054.

2. Implementation Schedule

The Board of Trustees of the State Bar must develop a schedule for implementation of subsection (a) that requires all active licensed attorneys for whom the State Bar does not have fingerprint images to submit fingerprints to the Department of Justice by December 1, 2019.

3. Fingerprint Submission and Processing Costs

All costs of providing criminal history information to and the processing of fingerprints for, the State Bar, including print furnishing and encoding, as required by section 6054, shall be borne by the licensed attorney.

The State Bar will cover the DOJ and FBI processing costs for licensed attorneys who have been granted a fee scaling or fee waiver for annual membership fees pursuant to State Bar Rule 2.15(A) or 2.16(C)(3)(c). These attorneys will pay for all third party print furnishing costs.

ATTACHMENT 5

Office of Admissions - Detailed Workload Estimates for Fingerprinting

Functions & Tasks	Time per Task (minutes)	Annual Frequency (2018-2019)*			Post-2019 Annual
		Low (10 yr)	Medium (20 yr)	High (27 yr)	
1. Review background checks that contain un-disclosed criminal history information.					
<i>Tasks</i>					
Create hard-copy case file	10	172	344	464	50
Enter data in AS 400	5				
Conduct additional research	30				
Prepare recommendation for CBE	60				
Present case to CBE	10				
Prepare disposition	30				
Finalize case file including data entry	1.0				
Subtotal (minutes)	155	0.28	0.56	0.75	0.08
Subtotal - Workload as Full Time Equivalent Staff (FTE) †					
2. Troubleshooting and error elimination					
<i>Tasks</i>					
Work with IT when RAP sheet cannot be connected to applicant or licensee	30	2	3	5	3
Work with DOJ and ARCR when fingerprint submission fails, second print required	60				
Work with DOJ and ARCR when FP clears with DOJ but not FBI (unable to read)	30				
Subtotal (minutes)	120	0.00	0.00	0.01	0.00
Subtotal - Workload as Full Time Equivalent Staff (FTE) †					
3. Policy development and Staff compliance					
<i>Tasks</i>					
Development of policies for evaluating and managing Subsequent Arrest Notifications	2,400	0.025			
Development (revision) of policies for management of expired applications	2,400	0.025			
Ensuring compliance with new policies including staff training & monitoring	3,300	0.034			
Compliance with Custodian of Records & other DOJ policies	1,000	0.010			
Creating the No Longer Interested List (NLI) and transmitting to DOJ.	720	0.008			
Compliance with Penal Code §11105.2-purging documents appropriately	720	0.008			
Subtotal - Workload as Full Time Equivalent Staff (FTE) †		0.050	0.060		
Admissions Workload Totals as Full Time Equivalent Staff (FTE) †					
		(one-time costs included in 2018-2019 range)			Post-2020 Annual
		Low	Medium	High	0.14
		0.33	0.61	0.81	

* For Function 1, the number of Subsequent Arrest Notifications (SANs) for which Admissions will be responsible is deflated by 95 percent of the total. This is because Admissions will be responsible for only those criminal charges and convictions that occurred prior to admission to the Bar, a much shorter period of time than the period of time after admission.

* For Function 2, the number of cases requiring troubleshooting and error elimination is reduced still further, assuming an error rate of only one percent of the background checks handled by Admissions.

† FTE is calculated using the estimated work year value that was adopted by the Judicial Council of California for the Resource Assessment Study model. That model estimates a work year of 219 days once vacation, sick time, holidays, and weekends are subtracted. The productive work day is estimated at approximately 7.3 hours to account for two fifteen minute breaks and another approximately 10 minutes for administrative functions. Under these assumptions, there are approximately 1,598 hours available in the work year, or 95,900 minutes. The actual hours worked by staff will vary depending on a number of factors that cannot be modeled here.

Attorney Regulation and Consumer Resources - Detailed Workload Estimates for Fingerprinting

Functions & Tasks	Time per Task (minutes)	Annual Frequency (2018-2019)*			Post-2019 Annual
		Low	Medium	High	
1. Notify attorneys of new policy, deadlines, resources for compliance		4	6	12	4
Tasks					
Prepare contact list of attorneys by compliance group / compliance status	60				
Draft language for notification	120				
Send notification	30				
Query database to identify attorneys not yet in compliance	60				
Draft language for reminder notifications	120				
Send reminder notifications to non-compliant attorneys	30				
Subtotal (Minutes)	420	0.02	0.03	0.05	0.02
Subtotal - Workload as Full Time Equivalent Staff (FTE) †					

2. Impose administrative sanctions on attorneys for failure to comply					
Tasks					
Query license database and confirm lack of compliance, time frame, notifications	60				
Draft language notifying licensees that they will be suspended	120				
Send notification	30				
Conduct final query to confirm lack of compliance, time frame, notifications	60				
Change attorney status to "inactive - FP compliance"	120				
Subtotal (Minutes)	390	0.02	0.02	0.05	0.02
Subtotal - Workload as Full Time Equivalent Staff (FTE) †					

Functions & Tasks	Time per Task (minutes)	Annual Frequency (2018-2019)*			Post-2020 Annual
		Low	Medium	High	
3. Data management and Correspondence		700	1,400	2,800	1,400
Tasks					
Change attorney status back to "active" from "inactive" following compliance	15				
Review e-mail correspondence, reply as appropriate, forward when necessary	15				
Subtotal (Minutes)	30	0.22	0.44	0.88	0.44
Subtotal - Workload as Full Time Equivalent Staff (FTE) †					

Functions & Tasks	One Time FTE	Annual FTE		
		Low (10 Yr)	Medium (20 Yr)	High (27 Yr)
3. Policy development and staff compliance		0.33	0.56	1.05
Tasks				
Development of policies for evaluating and managing Subsequent Arrest Notifications	2,400	0.025		
Work with IT on modifications to MyStatebar pages and information contained there	2,400	0.025		
Development (revision) of policies for management of expired applications	2,400	0.025		
Ensuring compliance with new policies including staff training & monitoring	3,300	0.034		
Compliance with Custodian of Records & other DOJ policies	1,000	0.010		
Subtotal (Minutes)	10,500	0.075	0.045	0.045
Subtotal - Workload as Full Time Equivalent Staff (FTE) †				
ARCR Workload Totals as Full Time Equivalent Staff (FTE) †				
		0.33	0.56	1.05
				0.52

* For Functions 1, frequencies refer to number of times per year; low estimates would be quarterly, high estimates would be monthly.
 * For Functions 2 and 3, attorneys are currently reclassified from "Active" to "Inactive" in batch following the passage of specific deadlines. Reactivation from "Inactive" to "Active" occurs on an individual basis and currently occurs approximately 1,400 times per year. Assumption is that implementation of new policies on fingerprinting will result in half as many attorneys falling out of compliance on the low end (700), the same amount on the medium estimate, and twice as many on the high-end estimate.

† FTE is calculated using the estimated work year value that was adopted by the Judicial Council of California for the Resource Assessment Study model. That model estimates a work year of 219 days once vacation, sick time, holidays, and weekends are subtracted. The productive work day is estimated at approximately 7.3 hours to account for two fifteen minute breaks and another approximately 10 minutes for administrative functions. Under these assumptions, there are approximately 1,588 hours available in the work year, or 95,900 minutes. The actual hours worked by staff will vary depending on a number of factors that cannot be modeled here.

Resource Center - Detailed Workload Estimates for Fingerprinting

	Time per Task (minutes)	Annual Frequency (2018-2019)*			Post-2019 Annual
		Low (2.5%)	Medium (5%)	High (10%)	
1. Respond to phone calls regarding new policy and compliance <i>Tasks</i>		2,375	4,750	9,500	2,500
Respond to phone inquiries regarding new policy.	10				
Subtotal (Minutes)	10				
Subtotal - Workload as Full Time Equivalent Staff (FTE) †		0.25	0.50	0.99	0.26

	One Time FTE		Annual FTE
	Low	High	
2. Policy development and staff compliance <i>Tasks</i>			
Development of phone scripts and policy documents for staff	2,400	0.025	
Ensuring compliance with new policies including staff training & monitoring	3,300	0.034	
Subtotal - Workload as Full Time Equivalent Staff (FTE) †		0.025	0.034
Resource Center Workload Totals as Full Time Equivalent Staff (FTE) †		0.27	0.52
			1.02

* For Function 1, frequencies are calculated on the low end as 2.5 percent of 190,000 active attorneys contacting the State Bar, as 5 percent at the middle of the range, and at 10 percent for the high-end. Annual frequencies are assumed to fall by about one half of the low-end estimate once the policy is established.

† FTE is calculated using the estimated work year value that was adopted by the Judicial Council of California for the Resource Assessment Study model. That model estimates a work year of 219 days once vacation, sick time, holidays, and weekends are subtracted. The productive work day is estimated at approximately 7.3 hours to account for two fifteen minute breaks and another approximately 10 minutes for administrative functions. Under these assumptions, there are approximately 1,598 hours available in the work year, or 95,900 minutes. The actual hours worked by staff will vary depending on a number of factors that cannot be modeled here.

Attorney Regulation and Consumer Resources - Detailed Workload Estimates for Fingerprinting

Functions & Tasks	Time per Task (minutes)	Frequency (one-time)
1. Design and build new interface for FTP with DOJ to handle two separate channel initial responses and subsequent arrest notifications		
<i>Tasks</i>		
Requirement Gathering for Admission and Membership channels	16,200	1
Design the solution that meets all business requirements	6,000	1
Review with key stakeholders and obtain approvals	480	1
Build the solution as described in the requirements and design	28,800	1
Conduct Unit Testing	2,400	1
Conduct Quality Assurance (QA) Testing and obtain approvals for the solution	3,600	1
Conduct User Acceptance (UAT) Testing and obtain approvals for the solution	4,800	1
Prepare the implementation and Change Management (CMR) form	960	1
Implement the solution	240	1
Post-Implementation testing and confirmation	240	1
Provide post implementation support	4,800	1
Project Closure	240	1
Subtotal (minutes)	68,760	
Subtotal - Workload as Full Time Equivalent Staff (FTE) †	0.72	

	Time per Task (minutes)	Frequency (annually)
3. Develop routines and schedules for system maintenance		
<i>Tasks</i>		
Assure that daily scheduled jobs are executed on the scheduler	2,190	1
DOJ data is updated necessary database components	2,190	1
Monitor and Troubleshoot production issues and resolve	3,600	1
Design and build additional enhancements per business units need	11,520	1
Train business team members as needed	240	1
Monthly system and database maintenance	720	1
Subtotal (minutes)	20,460	
Subtotal - Workload as Full Time Equivalent Staff (FTE) †	0.21	

	One Time FTE	Annual FTE
IT Workload Totals as Full Time Equivalent Staff (FTE) †	0.72	0.21

Additional detail re: building the solution under Function 1:

- Build an exception process for the people who are not matched by system.
- Build an exception process for DOJ rejected responses
- Build an extract process for ORIA and other departments as needed
- Build new database tables to host all new data elements
- Integrate fingerprinting with other applications such as membership, OCTC, Admission etc.
- Identify roles and access level for different business groups
- Build a search tool to identify the DOJ responses
- Build an UI to extract the list of members who needs to be fingerprinted
- Build an UI to track the list of members who completed the fingerprinting
- Build a process for NLI
- Fix the bugs in existing Admission applications

† FTE is calculated using the estimated work year value that was adopted by the Judicial Council of California for the Resource Assessment Study model. That model estimates a work year of 219 days once vacation, sick time, holidays, and weekends are subtracted. The productive work day is estimated at approximately 7.3 hours to account for two fifteen minute breaks and another approximately 10 minutes for administrative functions. Under these assumptions, there are approximately 1,598 hours available in the work year, or 95,900 minutes. The actual hours worked by staff will vary depending on a number of factors that cannot be modeled here.

Office of the Chief Trial Counsel - Detailed Workload Estimates for Fingerprinting

Functions & Tasks	Time per Task (minutes)	Annual Frequency (2018-2019)			Post-2019 Annual
		Low (10 yr)	Medium (20 yr)	High (27 yr)	
1. Intake case processing - review un-disclosed criminal history information.					
<i>Tasks</i>					
Create hard-copy case file	5				
Enter data in AS 400 / Odyssey	5				
Prepare closing letter or forward for further investigation / prosecution	20				
Case monitoring for charged cases	30				
Subtotal (minutes)	60	2.15	4.30	5.81	0.22
Subtotal - Workload as Full Time Equivalent Staff (FTE) †					
2. Investigation and prosecution of attorneys with un-disclosed criminal history information.					
<i>Tasks</i>					
Develop investigation plan, review, approve, finalize	360				
Investigation, document review, communication	240				
Preparation of offers, negotiation, settlement	240				
Subtotal (minutes)	840	1.51	3.01	4.06	0.15
Subtotal - Workload as Full Time Equivalent Staff (FTE) †					
3. Trial					
<i>Tasks</i>					
Preparation for trial, argument, trial	2,400				
Trial	2,400				
Post disposition case management	480				
Subtotal (minutes)	5,280	0.47	0.95	1.28	0.05
Subtotal - Workload as Full Time Equivalent Staff (FTE) †					
4. Policy development and staff compliance					
<i>Tasks</i>					
Development of policies for evaluating and managing Subsequent Arrest Notifications	2,400				
Development (revision) of policies for handling undisclosed criminal history	2,400				
Ensuring compliance with new policies including staff training & monitoring	3,300				
Compliance with Custodian of Records & other DOJ policies	1,000				
Subtotal - Workload as Full Time Equivalent Staff (FTE) †		0.050	0.045		
OCTC Workload Totals as Full Time Equivalent Staff (FTE) †					
(one-time costs included in 2018-2019 range)					
		4.18	8.31	11.20	0.46

All caselead estimates assume only the NET increase in criminal record reports as a result of Subsequent Arrest Notification.

* For Function 2, the frequency is reduced based on an assumption that 95 percent of cases will close at Intake.

* For Function 3, the frequency is reduced again by 95 percent on the assumption that 95 percent of cases close in Office of Investigations.

† FTE is calculated using the estimated work year value that was adopted by the Judicial Council of California for the Resource Assessment Study model. That model estimates a work year of 219 days once vacation, sick time, holidays, and weekends are subtracted. The productive work day is estimated at approximately 7.3 hours to account for two fifteen minute breaks and another approximately 10 minutes for administrative functions. Under these assumptions, there are approximately 1,598 hours available in the work year, or 95,900 minutes.

The actual hours worked by staff will vary depending on a number of factors that cannot be modeled here.

State Bar Court - Detailed Workload Estimates for Fingerprinting

Functions & Tasks	Time per Task (minutes)	Annual Frequency (2018-2019)			Post-2019 Annual
		Low (10 yr)	Medium (20 yr)	High (27 yr)	
1. Case Preparation and Case Management					
<i>Tasks</i>					
Enter data in AS 400 / Odyssey	20	9	17	23	1
Calendar management	45				
Early Neutral Evaluation	240				
Subtotal (minutes)	305	0.03	0.05	0.07	0.00
Subtotal - Workload as Full Time Equivalent Staff (FTE) †					
3. Trial					
Preparation for trial, argument, trial	2,400				
Trial	2,400				
Post disposition case management	480				
Subtotal (minutes)	5,280	0.47	0.95	1.28	0.05
Subtotal - Workload as Full Time Equivalent Staff (FTE) †					
2. Policy development and staff compliance					
<i>One Time FTE Annual FTE</i>					
Development of policies for evaluating and managing Subsequent Arrest Notifications	2,400		0.025		
Development (revision) of policies for case management on undisclosed criminal history	2,400		0.025		
Ensuring compliance with new policies including staff training & monitoring	3,300		0.034		
Compliance with Custodian of Records & other DOJ policies	1,000		0.010		
Subtotal - Workload as Full Time Equivalent Staff (FTE) †		0.050	0.045		
SBC Workload Totals as Full Time Equivalent Staff (FTE) †					
<i>(one-time costs included in 2018-2019 range)</i>					
		0.55	1.05	1.40	0.09

All caseload estimates assume only the NET increase in criminal record reports as a result of Subsequent Arrest Notification.
 † FTE is calculated using the estimated work year value that was adopted by the Judicial Council of California for the Resource Assessment Study model. That model estimates a work year of 219 days once vacation, sick time, holidays, and weekends are subtracted. The productive work day is estimated at approximately 7.3 hours to account for two fifteen minute breaks and another approximately 10 minutes for administrative functions. Under these assumptions, there are approximately 1,598 hours available in the work year, or 95,900 minutes.
 The actual hours worked by staff will vary depending on a number of factors that cannot be modeled here.

Office of Probation - Detailed Workload Estimates for Fingerprinting

Functions & Tasks	Time per Task (minutes)	Annual Frequency (2018-2019)*			Post-2019 Annual
		Low (10 yr)	Medium (20 yr)	High (27 yr)	
1. Intake case processing of new probationers		344	687	928	69
<i>Tasks</i>					
Create case file, data entry	10				
Prepare correspondence, arrange for meeting w/ respondent	30				
Intake meeting	120				
Case monitoring for charged cases	240				
Subtotal (minutes)	400	1.43	2.87	3.87	0.29
Subtotal - Workload as Full Time Equivalent Staff (FTE) †					

2. Sanctions and Probation failures	Tasks	Time per Task (minutes)	Annual Frequency (2018-2019)*			Post-2019 Annual
			Low (10 yr)	Medium (20 yr)	High (27 yr)	
Prepare documentation on non-compliance	120		17	34	46	3
Transmit documents and communicate with OCTC	240					
Subtotal (minutes)	360					
Subtotal - Workload as Full Time Equivalent Staff (FTE) †			0.06	0.13	0.17	0.01

3. Trial	Tasks	Time per Task (minutes)	Annual Frequency (2018-2019)*			Post-2019 Annual
			Low (10 yr)	Medium (20 yr)	High (27 yr)	
Preparation for trial, argument, trial	480		1	2	2	0
Trial	320					
Post disposition case management	20					
Subtotal (minutes)	820					
Subtotal - Workload as Full Time Equivalent Staff (FTE) †			0.01	0.01	0.02	0.00

4. Policy development and staff compliance	Tasks	Time per Task (minutes)	One Time FTE	Annual FTE	Post-2019 Annual
Ensuring compliance with new policies including staff training & monitoring	3,300		0.010		
Compliance with Custodian of Records & other DOJ policies	1,000		0.025	0.045	
Subtotal - Workload as Full Time Equivalent Staff (FTE) †					

Office of Probation Workload Totals as Full Time Equivalent Staff (FTE) †	(one-time costs included in 2018-2019 range)			Post-2019 Annual
	Low (10 yr)	Medium (20 yr)	High (27 yr)	
	1.53	3.04	4.09	0.35

All caseload estimates assume only the NET increase in criminal record reports as a result of Subsequent Arrest notification.
 * For Function 1, the number of Subsequent Arrest Notifications (SANs) for which the Office of Probation will be responsible is deflated by 99% of the total based on an assumption that only one percent of cases will result in probation.
 † FTE is calculated using the estimated work year value that was adopted by the Judicial Council of California for the Resource Assessment Study model. That model estimates a work year of 215 days once vacation, sick time, holidays, and weekends are subtracted. The productive work day is estimated at approximately 7.3 hours to account for two fifteen minute breaks and another approximately 10 minutes for administrative functions. Under these assumptions, there are approximately 1,598 hours available in the work year, or 95,900 minutes. The actual hours worked by staff will vary depending on a number of factors that cannot be modeled here.

Office of General Counsel - Detailed Workload Estimates for Fingerprinting

Functions & Tasks	Time per Task (minutes)	Annual Frequency (2018-2019)			Post-2019 Annual
		Low	Medium	High	
1. Respond to ad-hoc inquiries re: policy Conduct analysis, meet w/ staff, draft responses	90	100	500	1,000	100
Subtotal (minutes)	90	0.09	0.47	0.94	0.09
Subtotal - Workload as Full Time Equivalent Staff (FTE) †					

	Annual Frequency (2018-2020)		
	Low	Medium	High
2. Legal work associated with implementation of the policy Review of policy papers and opinions	480		
Investigation and research	2,400		
Document preparation and filing	4,800		
Negotiation and brief drafting	2,400	20	50
Subtotal (minutes)	10,080		
Subtotal - Workload as Full Time Equivalent Staff (FTE) †			
	0.53	2.10	5.26

3. Policy development and review Tasks	One Time FTE	Annual FTE
Write reports to Board of Trustees making recommendations re: sanctions	2,400	
Report to Board of Trustees re: policy implementation and issues	480	
Subtotal (minutes)	7,680	
Subtotal - Workload as Full Time Equivalent Staff (FTE) †		
	0.08	

OGC Workload Totals as Full Time Equivalent Staff (FTE) †	(one-time costs included in 2018-2019 range)			Post-2019 Annual
	Low	Medium	High	
	0.70	2.65	6.27	0.09

† FTE is calculated using the estimated work year value that was adopted by the Judicial Council of California for the Resource Assessment Study model. That model estimates a work year of 219 days once vacation, sick time, holidays, and weekends are subtracted. The productive work day is estimated at approximately 7.3 hours to account for two fifteen minute breaks and another approximately 10 minutes for administrative functions. Under these assumptions, there are approximately 4,598 hours available in the work year, or 95,900 minutes. The actual hours worked by staff will vary depending on a number of factors that cannot be modeled here.

Office of Research & Institutional Accountability - Detailed Workload Estimates for Fingerprinting

	Time per Task (minutes)	Annual Frequency (2018-2019)*			Post-2019 Annual
		Low (10 yr)	Medium (20 yr)	High (27 yr)	
1. Review criminal history information & route		3,437	6,874	9,280	344
<i>Tasks</i>					
Review criminal history information determine routing	15				
Destroy records where criminal history was already known	10				
Subtotal (Minutes)	25	0.90	1.79	2.42	0.09
Subtotal - Workload as Full Time Equivalent Staff (FTE) †					
2. Project management and compliance enforcement					
<i>Tasks</i>					
Schedule and lead inter-divisional meetings on fingerprint policy	2,400	0.025			
Review and maintain schedules of Custodian of Records and other compliance documents	2,400	0.025			
Write reports to Board of Trustees making recommendations re: sanctions	2,400	0.025			
Coordination with DOJ on data transmission	4,800	0.050			
Create and transmit the No Longer Interested List (NLI) to DOJ.	720	0.008			
Compliance monitoring for Penal Code §11105.2 document purging	720	0.008			
Report to Board of Trustees re: policy implementation and issues	480	0.005			
Subtotal - Workload as Full Time Equivalent Staff (FTE) †		0.075			
ORJA Workload Totals as Full Time Equivalent Staff (FTE) †					
(one-time costs included in 2018-2019 range)					
		Low	Medium	High	Post-2019 Annual
		0.97	1.87	2.49	0.15

* Unlike workload estimates for OCTC, SBC, and Probation where the filings estimates are based on NET complaints, this function is entirely new and the caseload estimates assume all new workload. Annual frequencies are assumed to fall by about one half of the low-end estimate once the policy is established.

† FTE is calculated using the estimated work year value that was adopted by the Judicial Council of California for the Resource Assessment Study model. That model estimates a work year of 219 days once vacation, sick time, holidays, and weekends are subtracted. The productive work day is estimated at approximately 7.3 hours to account for two fifteen minute breaks and another approximately 10 minutes for administrative functions. Under these assumptions, there are approximately 1,598 hours available in the work year, or 95,900 minutes. The actual hours worked by staff will vary depending on a number of factors that cannot be modeled here.