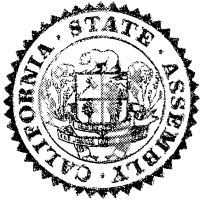


REPORT OF THE
OFFICE OF THE AUDITOR GENERAL
TO THE
JOINT LEGISLATIVE AUDIT COMMITTEE

284.2

OPPORTUNITIES TO IMPROVE MANAGEMENT
OF THE
STATE BAR OF CALIFORNIA

JANUARY 1976



Joint Legislative Audit Committee

OFFICE OF THE AUDITOR GENERAL

California Legislature



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January 18, 1977

The Honorable Speaker of the Assembly
The Honorable President pro Tempore of
the Senate
The Honorable Members of the Senate and the
Assembly of the Legislature of California

Members of the Legislature:

Your Joint Legislative Audit Committee respectfully submits the Auditor General's second of two reports on the management of the State Bar of California. The State Bar budget of over \$5 million dollars is supported by over 50,000 lawyers and is administered by their elected members of the Board of Governors.

The critical comments of the Auditor General will be of primary interest to lawyers and to legal journals and periodicals. The Committee will forward copies of the report to each local bar association and to each member of the Board of Governors.

The auditors are: Robert M. Neves and David B. Tacy.

Respectfully submitted,

MIKE CULLEN, Chairman
Joint Legislative Audit Committee

MC:1h

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SUMMARY

In 1974, the Auditor General reported a significant under-utilization of the State Bar's facilities and an inefficient use of some of the Bar's staff attorneys. Our current review has indicated virtually no improvement in either situation. The Bar's continuing neglect of the rental value of unneeded space in its Los Angeles building costs at least \$47,000 annually in forgone rental income. The Bar's failure to properly plan the interior of its new San Francisco building now under construction may mean the Bar has missed an opportunity to realize another \$57,000 annually in rental of Bar facilities until they are needed for Bar purposes.

Although the State Bar has had three opportunities to substitute less expensive staff for staff attorneys whose administrative duties did not require their legal expertise, in only one instance has the Bar made such an improvement in staff utilization which the Auditor General recommended in 1974. We estimate that in ten years the salary and benefits savings from the opportunities the Bar neglected would amount to more than \$170,000.

In addition to the Bar's failure to implement recommendations made by the Auditor General in his 1974 reports, the current review shows significant inefficiency in the management of the State Bar Journal,

which should be economically self-sufficient rather than cost the Bar \$126,000 a year, as it is currently budgeted. Our review also disclosed that in 1977 the State Bar should not need to charge a Client Security Fund fee, typically \$10 per active member, because a sufficient balance has already been established. Finally, the State Bar is not properly charging the costs of administering the Client Security Fund to that Fund, which results in an inequitable charge to the Bar's General Fund programs of at least \$27,000 annually.

INTRODUCTION

This is the second of two reports in response to a Legislative request to review the California State Bar's compliance with recommendations made by the Auditor General in two reports issued in 1974 (Reports 223.1, June 1974; and 223.2, August 1974). At that time, the Auditor General recommended in brief:

- That the Legislature disapprove proposed increases in State Bar membership fees until the State Bar developed sufficient justification for those increases
- That the State Bar make full and efficient use of its facilities before constructing new ones
- That the State Bar substitute administrative assistants for attorneys whose duties at the State Bar did not require their legal expertise.

The first report in the current review was issued in August 1976 (Report 284.1). It was critical of proposed 1977 membership fee increases as unneeded to meet needs which the Bar had neither adequately planned nor documented. This second report addresses the Bar's compliance with the second and third recommendations made in 1974 and some significant management issues raised during our current review.

These reviews are conducted under authority vested in the Auditor General by Section 10527 of the Government Code.

Background

The State Constitution requires that every attorney licensed in California be a member of the State Bar except for active judges of a court of record. The powers, duties and organization of the State Bar are specified in Section 6000, et seq. of the Business and Professions Code.

The State Bar's primary function is to regulate the legal profession in California. Under the jurisdiction of the State Supreme Court, the State Bar conducts the examination and licensing of attorneys, and the investigation and censure of members accused of professional misconduct. In appropriate cases, the State Bar may recommend that the State Supreme Court suspend or disbar a member. In addition, the State Bar may pay up to \$25,000 of special member dues to each member's client who suffers pecuniary loss because of that member's professional misconduct.

In addition to these regulatory activities, the State Bar represents the interests of the legal profession before the Legislature and the public. The Bar makes recommendations regarding the Governor's judicial appointments and the administration of justice. As California's professional attorney association, the State Bar also conducts an annual convention, publishes a monthly bulletin, The State Bar of California

Reports, and a bimonthly California State Bar Journal, and supervises a continuing professional education program operated by the University of California.

The State Bar is governed by a Board of Governors composed of 15 Bar members elected to three-year terms from various geographical districts and six non-lawyers appointed by the Governor. The Board's 1976-77 term is the first in which the non-lawyers serve on the Board. The first appointees will serve staggered terms of up to three years. By 1979 each of the non-lawyers will serve a three-year tenure equal to that of the lawyer Board members. Board members receive no remuneration except necessary expenses. The Board selects its own officers each year and appoints a secretary who serves as the executive director.

As of June 9, 1976, the State Bar had an active membership of 49,527 attorneys. In 1976, projected membership and examination fees should provide \$5,500,000 of the Bar's expected revenues of \$5,900,000. A full-time staff of 198 is budgeted for State Bar activities in 1976. Staff work is supplemented by voluntary service from State Bar members.

In 1977, the State Bar will be authorized to charge higher membership fees than those charged in 1976. The following table summarizes the history of such increases, membership growth, and related revenue since 1974.

State Bar Membership Fees,
Related Revenue and Membership
1974-1977

	<u>1974</u>	<u>1976</u>	<u>1977</u>
Membership Fees for Active Attorneys Admitted:			
0 - 2 years	\$45	\$50	\$ 55
2 - 5 years	60	70	85
5 - 10 years	80	90	115
over 10 years	80	90	130
State Bar Membership:			
Total	40,700	49,500*	52,900*
Percent Increase from 1974		22%	30%
Total Membership Fee Revenues:			
Total	\$3,000,000	\$3,900,000*	\$5,600,000*
Percent Increase from 1974		33%	87%

* Estimate

AUDIT RESULTS

INEFFICIENT FACILITY USE

In 1974 the Auditor General reported that the State Bar's proposed \$2 million addition to its San Francisco headquarters was unnecessary due to the availability of underutilized space in the Bar's Los Angeles building. Our current review found no improvement in the Bar's use of its Los Angeles building. The Bar's new \$5.6 million San Francisco headquarters, now under construction, has not been designed to allow excess space to be rented until it is needed by the Bar.

The State Bar is the sole tenant of both its San Francisco and Los Angeles buildings. As in 1974, the San Francisco building is fully occupied, requiring the Bar to house some San Francisco staff in rented facilities. On the other hand, the Los Angeles building is underutilized, resulting in space being unoccupied.

In our 1974 report we recommended that San Francisco staff housed in rented space be transferred to Los Angeles as an alternative to the Bar constructing additional space. The Bar has not implemented this recommendation and because of additional growth in the San Francisco staff, 56 of 134 full-time employees are now located in rented space at an annual budgeted cost of \$65,000. The Bar has begun construction of an

additional building in San Francisco which will provide space for all of the San Francisco staff and space for future staff growth.

Considering its current rate of staff growth, the decision to construct new facilities was warranted because the Los Angeles building would only be able to absorb a few years of staff increases and the inflationary costs of a delay in construction could make such a project financially prohibitive. However, with the completion of the construction, the Bar will own space in excess of immediate needs in both San Francisco and Los Angeles. To maximize use of Bar resources, this excess space should be made available for rental purposes until the Bar needs it.

Inefficient Design of New San Francisco Building

The new San Francisco building is designed to accommodate between 230 and 250 staff. However, the Bar is planning to occupy the entire building in 1977 with 153 projected staff. No plans have been made to set aside space for rental purposes. Had such plans been made, we estimate that at least \$43,000* annually could be earned in rental income between 1977 and 1982.

* All rental income estimates are net of rental management costs which would not be required otherwise.

We estimate that an additional \$14,000 in annual rental income could be earned if unnecessary conference rooms were converted into office space. The new San Francisco building is to have 13 conference rooms with simultaneous meeting capacity for about 297 persons. This is more than three times the present conference room capacity in the Bar's building and rented space in San Francisco. An analysis of conference room needs indicates that seven of the proposed conference rooms are unneeded. If the Bar's building plans were changed to use this space for office space rather than conference rooms, an additional 1800 square feet of floor space would be available for rental purposes.

Altering new building plans to accommodate rental tenants could be expensive. However, in our opinion, most of the potential \$57,000 rental income could still be realized if the Bar modified its plans for utilizing the space by relocating staff within the building and designating a specific rental area or areas until the space is needed for Bar purposes.

Underutilization of Los Angeles Building

As of May 28, 1976, the State Bar had a full-time staff of 58 (compared to 59 in 1974) located in its Los Angeles building. We estimate that this building could house a staff of 146, or more than twice the current occupancy. So much space is underutilized in the Los Angeles building that one entire floor has remained vacant since the five-story

building addition was completed in 1973. Since our 1974 review, the Bar has neither increased its occupancy nor made the excess space available for rental.

We estimate that the Bar could rent the Los Angeles space which will not be needed until at least 1983, for at least \$47,000 in annual net income. This estimate assumes setting aside enough non-rental space to permit Bar staff growth of eight percent annually in the Los Angeles office, or a doubling of that office's staff by 1983.

Need for Improved Planning

The State Bar's inefficient use of its facilities underscores the need for improved fiscal planning which we discussed in the first report in our current review (Report 284.1, August 1976). Had the Bar more carefully projected its staff expansion in San Francisco and Los Angeles, the opportunities for more efficient space utilization would have been apparent in time to revise the interior plans for the new San Francisco building, more accurately project the need for conference rooms, and rent excess space until it is needed.

The State Bar is, however, planning to vacate and rent its existing San Francisco building when the new one is finished. At least \$115,000 in annual rental income should be provided from renting the older facility.

CONCLUSIONS

The State Bar has neither designed its new San Francisco building nor utilized its Los Angeles building to maximize rental of unneeded space. As a result, the Bar may have lost the opportunity to realize a potential rental income of at least \$57,000 annually from space in the new San Francisco building which will not be needed until at least 1983. In addition, the State Bar continues to forgo net rental income of at least \$47,000 each year that excess space in the Los Angeles building remains unrented.

RECOMMENDATIONS

The State Bar should:

- Plan its space utilization more carefully to maximize efficiency
- Seek rental tenancy immediately for all available excess space in the Los Angeles building which will not be needed for Bar purposes until at least 1983.

BENEFITS

The State Bar could earn at least \$47,000 annually by renting unneeded space in the Los Angeles building through 1982. Better space planning will help avoid losses such as the \$57,000 rental income from surplus floor space in the new San Francisco building.

INEFFICIENT STATE BAR
JOURNAL MANAGEMENT

The State Bar projects that in 1976 it will have a net cost of \$126,000 (\$176,000 publishing cost less \$50,000 advertising revenue) to produce its bimonthly legal magazine, the California State Bar Journal. Our review shows that advertising rates charged by the Journal are below the rates charged by comparable periodicals, and that the amount of advertising space sold in the Journal is below industry standards. As a result, the Journal is not realizing its potential to be financially self-supporting, if not a net contributor to Bar finances.

Advertising Rates Below Standard

The State Bar portrays the Journal as a high-quality magazine containing articles of professional interest to California's attorneys. Despite the potential attractiveness of such an audience to potential advertisers, the Journal's advertising rates are the second lowest per thousand circulation of all comparable magazines for which data were available, as the following table indicates:

Advertising Rates of Selected Legal Magazines

<u>Publication</u>	<u>One-time Full Page Rate per 1000 Circ.</u>
Anti-Trust Bulletin	\$ 71.42
San Francisco Bar Association Briefcase	62.50
Kentucky Bench and Bar	47.41
Maryland Bar Journal	42.86
National Legal Aid and Defenders Briefcase	35.71
American Law Institute Practical Lawyer	29.24
Indiana State Bar Re Gestae	27.31
Federal Bar Association Journal	23.33
Georgia State Bar Journal	21.17
Oregon State Bar Bulletin	21.04
Student Lawyer (not affiliated)	18.33
Case and Comment (not affiliated)	17.86
Illinois State Bar Journal	17.03
Juris Doctor (not affiliated)	15.79
Florida State Bar Journal	15.63
American Association of Trial Lawyers Trial	15.00
American Bar Association Journal	14.15
Wisconsin State Bar Bulletin	12.48
Texas State Bar Journal	12.34
New York State Bar Journal	11.81
Michigan State Bar Journal	11.04
Journal of Legal Medicine	6.91
<u>California State Bar Journal</u>	<u>6.70</u>
Law and Contemporary Problems (not affiliated)	3.04

We consulted several advertising agencies and a magazine publisher who said that, assuming the Journal is read by California attorneys, its advertising rates are at most 50 percent of what the market will bear for this publication. We were also advised that the Journal's advertising rate could be six times the current rate within five to seven years. To obtain higher advertising rates, the Bar should convince potential advertisers of the Journal's marketing value. The industry representatives we consulted recommended that an independent circulation audit be conducted.

We also found that the amount of Journal advertising is below industry practice. The State Bar sells about 21 percent of the Journal's space to advertisers. The industry representatives we consulted advised us that the minimum standard for such a magazine is 50 percent of its page volume. We conclude that the Journal's advertising should be increased about one-and-one-half times current volume, which would increase annual Journal advertising revenue from \$50,000 to about \$125,000 even without any increase in Journal advertising rates.

If the State Bar doubled the Journal's advertising rates and increased advertising space one-and-one-half times, we estimate that annual advertising revenue could be increased from \$50,000 to about \$250,000. We believe that such a revenue level should more than cover the current \$176,000 Journal budget plus whatever expenses would be incurred to obtain the larger advertising volume. Eventually, the Journal could produce revenue in excess of its cost.

Need for Professional Journal Management

We believe that the primary factor in the Journal's low advertising revenues is a lack of professional management. The Journal is managed by a part-time committee of Bar members. The Journal operation is independent of the Bar's Public Affairs Department, which manages all other Bar publications and public relations. Due to this split in responsibility, coordination is inhibited among the Bar's publications and the Journal receives virtually no benefit from the journalism management in the Public Affairs Department.

We believe that the Bar should centralize its publications management under an individual who is (1) professionally qualified in journalism management, (2) able to devote sufficient time to the Journal to assure its efficient operation, and (3) dedicated to the Journal's financial success.

The State Bar should also review the Journal's management policies for soliciting articles and advertising. The Journal does not generally solicit articles. As a result, the magazine's content is determined by whatever unsolicited material the editor receives, rather than by editorial policy directed to identified reader interests. Similarly, the Journal staff does not solicit advertising in person but instead uses only mail solicitation.

CONCLUSION

The State Bar Journal is inefficiently managed and without sufficient centralized professional direction. One result is that the Journal's advertising revenue is only a fraction of its potential. If the Journal earned the industry minimum standard in advertising revenue, the magazine could become financially self-sufficient.

RECOMMENDATIONS

The State Bar should:

- Centralize the management of the Bar's publications under a qualified professional dedicated to the Journal's economic self-sufficiency
- Contract for a recognized independent circulation auditing firm to survey the Journal's readership; the Bar should adjust advertising rates and magazine content accordingly
- Adopt marketing techniques to increase the Journal's advertising to at least 50 percent of the magazine's page volume.

BENEFITS

These improvements should lead to the State Bar Journal's financial self-sufficiency at an annual savings to the Bar of about \$126,000.

UNNECESSARY CLIENT
SECURITY FUND FEES

Each year since 1973, information has been available indicating that the State Bar would not need the revenue from Client Security Fund fees in the following year. Having charged such fees anyway, the Bar accumulated a Fund balance of \$1,750,361 by July 31, 1976. Our projections indicate that a sufficient balance has been accumulated that additional Client Security Fund fees will be unnecessary in 1977.

Beginning in 1972, the Legislature authorized the State Bar to charge each active Bar member up to \$10 annually to support a Client Security Fund. The purpose of the Fund is to compensate California attorneys' clients for financial losses arising from attorneys' dishonest conduct. State Bar policy provides that up to \$25,000 may be paid to any one claimant.

The State Bar charged the \$10 Client Security Fund fee in 1972, 1974, 1975 and 1976. Total fees of \$1,931,887 have been collected through July 31, 1976. Through September 15, 1976, only \$178,195 had been paid to victims of attorney misconduct in California.

Had the Bar compared available data on the Fund's cumulative claims exposure with the Fund balance in each year since 1973, the Bar could have projected that additional fee revenue would have been unnecessary in 1974, 1975 and 1976.

We project that the Fund could have a balance of at least \$1,555,000 at the end of 1977, based on the following assumptions:

- No 1977 fee revenue
- Historical rates of cumulative claims and payments
- Interest income continuing at an annual rate of 4.9 percent
- Administrative charges will be made on the Fund, as recommended later in this report.

The following table summarizes our projection of the Fund's status in 1977.

Client Security Fund
Projected 1977 Status Without 1977 Fee Income

Projected Fund Balance, 12-31-76	\$1,675,736
Less Administrative Charges, 1976	(27,163)
Less Projected Payments to Victims, 1977	(136,538)
Less Administrative Charges, 1977	<u>(30,337)</u>
Subtotal	1,481,698
Interest Income	<u>73,640</u>
Projected Fund Balance, 12-31-77	<u>\$1,555,338</u>

Given such a large projected Fund balance in 1977, we believe that charging a Client Security Fund fee in 1977 will be unnecessary. After completion of our review, the Board of Governors suspended the Client Security Fund fee in 1977.

CONCLUSION

Having charged the \$10 annual Client Security Fund fee in each year since 1973, the State Bar could have predicted that charging the fee in each successive year was unnecessary. As a result of the Bar's accumulation of Client Security Fund revenue, assessing the Client Security Fund fee in 1977 will not be necessary.

RECOMMENDATIONS

The State Bar should:

- Suspend the Client Security Fund fee in 1977
- Use quantified analysis of Fund exposure and historical payment rates to project the need for charging Client Security Fund fees.

BENEFITS

The State Bar membership will save about \$529,000 in 1977 if the traditional \$10 annual Client Security Fund fee is not assessed. Better forecasting will save the membership unnecessary fees beyond 1977.

COSTS OF ADMINISTERING THE
CLIENT SECURITY FUND ARE
NOT PROPERLY CHARGED TO
THE FUND

More than \$27,000 is incurred annually to process and investigate claims on the State Bar's Client Security Fund by alleged victims of attorney dishonesty. It is the Bar's policy to pay the Fund's administrative costs from the Bar's General Fund, rather than charge the self-supporting Client Security Fund. We believe these costs should be charged to the Client Security Fund to properly reflect its operations; this improvement in fund accounting policy would make an additional \$27,000 available to the Bar's General Fund each year.

Inequitable Accounting Policy

The State Bar's policy of paying the Client Security Fund's administrative costs from the Bar's General Fund, is based on a 1971 Board of Governors' resolution. Bar officials believe the resolution was necessary to secure the Legislature's approval to create the Fund and charge the additional \$10 annual fee. A Legislative Counsel Opinion (Appendix A) indicates that the State Bar may charge the Fund for reasonable costs incurred in its administration.

All of the fiscal effects of a program should be included in the accounting statements for the program. In addition, charging the Client Security Fund's administrative costs to the Bar's General Fund has the effect of taxing inactive Bar members, who are only required to pay the Bar's general membership fee.

Improper Budget Allocations

The State Bar is not properly budgeting for the Client Security Fund's administrative costs. While \$47,223 has been budgeted for 1976, we estimate that only \$27,163 can be properly allocated according to the Bar's current allocation system. This discrepancy arose because the Bar improperly allocated all of the expenses of three employees to Client Security Fund activity when nearly half of their time is devoted to other Bar programs. In addition, these figures underestimate the actual amount which should be allocated because the Bar's allocation system accounts only for staff and travel expenses. The Bar does not allocate indirect expenses such as rent, telephone, and other overhead in its budget for Client Security Fund administration. Appendix B describes some considerations for improving the Bar's allocation of Client Security Fund charges.

CONCLUSION

The costs of administering the State Bar's Client Security Fund are not properly budgeted nor charged to the Fund. As a result, State Bar accounts inaccurately portray the costs of this program.

RECOMMENDATIONS

The State Bar should:

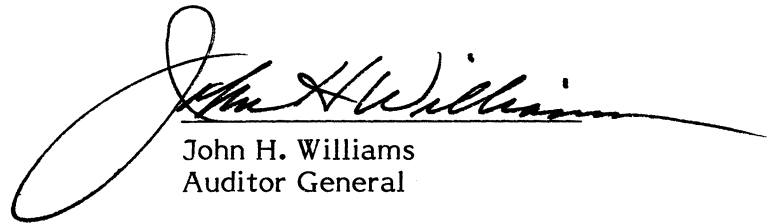
- Develop procedures for determining the expenses attributable to the administration of the Client Security Fund (See Appendix B)
- Charge the Client Security Fund with the administrative costs attributable to that Fund.

BENEFITS

The State Bar's General Fund would save more than \$27,000 annually from this improvement in fund accounting and expense allocation. In addition, the membership fees of inactive Bar members would no longer be used to administer a program for which active Bar members are supposed to be responsible.

unnecessary attorneys because attorney salary scales reach higher maximums than those of nonprofessionals. State Bar attorneys are also accorded more office space than are the nonprofessional staff. Our analysis of the Bar's salary scales indicates that after ten years the salary savings alone would total \$172,000 if the Bar had implemented our recommendation.

Respectfully submitted



John H. Williams
Auditor General

Date: January 14, 1977

Staff: Robert M. Neves
David Tacy

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January 10, 1977

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Mr. John H. Williams
Auditor General
State of California
925 "L" Street, Suite 750
Sacramento, California 95814

Dear Mr. Williams:

The Auditor General, in his Report #284.2, addresses himself to four (4) principal areas where there could be improvement in use of facilities or in use of personnel. This report will deal with those matters item by item and will point out instances where we have complied with and even anticipated certain recommended changes, as well as noting other instances where we are in disagreement.

Facility Use

1. San Francisco Building

Most of the suggestions recommended by the Auditor General were anticipated, but we have not yet had an opportunity of implementing our intentions. The Auditor General quite correctly points out that upon completion of the San Francisco building, there will be excess space for several years which can be rented out to the financial advantage of the State Bar.

In order to maximize the space available in San Francisco, we have planned to concentrate all of our San Francisco activities in the new building and, thus, leave the old building for rental. Obviously, this would be more attractive to a tenant rather than trying to rent segments of both buildings. Plans for rental are proceeding and, hopefully, a satisfactory tenant or tenants will be obtained for the old building before completion of the new building.

As the Auditor General knows, the original plans for expanding the San Francisco building contemplated a five-story building of approximately 46,000 square feet immediately adjoining the existing structure. In 1975 the State Bar obtained additional redevelopment property, which enabled a redesign of the addition, resulting now in a three-story structure the entire length of the block on Franklin Street with approximately 71,000 square feet, an additional 25,000 square feet more than originally planned. Taking into account inflation since 1972 when the project was planned, the new structure with the additional 25,000 square feet will cost little more than the smaller, but taller and less efficient structure. (See Footnote 1 below.) This additional square footage will enable us to move all facilities into the new structure and, thus, will effect an even greater saving because we will now be able to present the old building in its entirety for rental. Every effort will be made to plan occupancy in the new building so that maximum rental areas can be available. It must, however, be realized that such planning involves inherent problems which are somewhat difficult to overcome. (See Footnote 2 below.)

For example, every effort is being made to allocate areas to different departments and allow expansion space adjacent to such departments so that they will not have to move and disrupt the entire plan when the inevitable expansion takes place. Thus, from a long-range standpoint, excess space will probably be scattered throughout the building rather than being concentrated in one space. Further, the confidentiality of activities taking place in departments such as General Counsel, Discipline and the Committee of Bar Examiners would make it difficult to have third parties in close vicinity. Bearing in mind these problems, the State Bar nevertheless will try to free as much space as possible for rent, preferably to whatever tenant or tenants occupy the old building.

Footnote 1

Although not particularly germane to the above discussion, we note that in the Auditor General's Report the cost of the addition was originally projected at "\$2 million." Further, in the same paragraph on page 7 of the Report, mention is made of the new "\$5.6 million headquarters, now under construction." The figure of \$2 million, if ever used by the State Bar, was a very early figure when an addition was first discussed. The present projected cost of the entire project, including land cost, architect's and other fees, is approximately \$5,920,000.

Footnote 2

We have assumed that any comment concerning insufficient "design" actually relates to insufficient "utilization of space" and have made our comments accordingly. Actually, the building, in our opinion, is better designed and a vast improvement over the original, inefficient five-story structure.

We estimate that the maximum amount of space available in San Francisco for rental in the new facility will be approximately 5800 square feet, which should generate a maximum of \$45,000 net income to the State Bar. This figure is lower than the projection made by the Auditor General's Report. However, we will try to generate as much rental space as possible, with the hope that the Auditor General's projection was correct (although we are not optimistic on this point and believe our figure is more realistic).

Some question was made concerning the number of conference rooms. We point out, first of all, that there has been an absence of adequate meeting rooms in the old building and fully-debated planning resulted in the determination that the number of conference rooms projected is the minimum. However, we also point out that these rooms can be utilized for office and other purposes when they are not in use. The present lack of proper meeting space must be obvious to anyone who now comes to the State Bar building when large meetings are in progress in the existing Board Room, particularly when the Board of Governors is in session or when its many committees are meeting at their regularly scheduled times.

2. Los Angeles Building

The problem of excess space in the Los Angeles building is a matter less easily dealt with. The fourth floor has been held without development for several years pending further need for expansion of facilities in the Los Angeles area. Most recently, it has been so held pending a final decision as to where the new Board of Governors meeting room in Los Angeles will be located and the extent to which it will be developed to accommodate additional Board members and public meetings. However, on reviewing the Auditor General's Report, it is now the sense of the Board members that immediate steps should be taken to review this situation again and either arrange a move of appropriate activities from San Francisco to Los Angeles, bring into the Los Angeles building some activities which are now housed outside the State Bar building in Los Angeles, or seek outside renters until the space is actually needed by reason of the natural and inevitable development of State Bar activities in the south. This matter will be given immediate attention--although the matter has been under study and there has been a tacit mandate to the staff to take some action to utilize the Los Angeles building to the greatest extent possible, either by State Bar occupancy or rental. (See Footnote 3 below.)

Footnote 3

We have not discussed the possibility of moving activities from San Francisco to Los Angeles or vice versa on a temporary basis, believing that this does not answer any long-range problems and would only be an added expense with no actual saving, to say nothing of disruption of activity and possible unnecessary loss of experienced personnel.

State Bar Journal Management

The Auditor General's Report concludes that the advertising rates for the Journal are below rates charged by comparable periodicals, the volume of advertising is below industry standards and there is insufficient professional management to insure its successful operation.

The State Bar's management is fully as interested as the Auditor General is in efficient and economical operation of all its publications, the Journal included.

For this reason, the comments about the Journal's operation were carefully analyzed by, among others, the Editor, Managing Editor and a former Editor who is now a member of the Board of Governors.

Following is a general summary of their conclusions:

Many of the points raised by the Auditor General warrant further consideration and the State Bar will review these points to maintain a publication which will effectively serve the needs of California's lawyers.

The Auditor General recites that the Journal should be self supporting. This would be a most laudable achievement, but the history and experience of other bar associations with comparable publications belies that fact.

Indeed, a recent Bar Journal Advertising Survey conducted by the American Bar Association in December 1974 offers a realistic index.

The ABA survey analysis said that ads will probably never pay the cost of publishing bar journals. Only one bar association out of forty-five said its costs were paid by advertising revenue. This suggests that the goal of complete subsidization of the Journal may be an unrealistic expectation.

A random sampling of eight legal magazines resulted in the following percentages of ad pages to the total number of pages in an issue:

Oregon State Bar Journal	34.5%
Wisconsin State Bar Bulletin	28.1%
Indiana State Bar Res Gestae	26.8%
Florida Bar Journal	30.5%
New York State Bar Journal	13.6%
Texas Bar Journal	21.5%
Illinois State Bar Journal	28.3%
TRIAL	26.5%

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It should be noted that this sampling reflects an advertising percentage considerably less than the 50% recommended by the Auditor General.

For the year 1976, the California Bar Journal had an average of 26.3% advertising in each of its six issues. This figure is consistent with other bar journals throughout the country.

The Auditor General's Report, in ranking the Journal with other publications in the table entitled "Advertising Rates of Circulated Legal Magazines," uses only the page rate-per-thousand circulation as the standard. It would appear that the comparisons sought are not necessarily valid, because there are many other criteria which must be taken into consideration in determining what the cost of a full-page ad will be. The reach of the magazine, the buying power of the subscribers, and the demographic characteristics of a particular area are all factors which must be taken into account in setting a rate per page. The primary criterion generally used is to charge what the market will bear. Over the years, the State Bar Journal Committee and staff have periodically reviewed the rates and have adjusted them according to the marketplace. In 1972 the advertising rates of the Journal were raised 87.5%. The Journal staff and committee are reviewing the market to consider revising the rates when in September 1977 the format of the Journal will be changed to 8-1/2"x11". We feel that our advertising rates should reflect not only the change in page size but also the prevailing rate in the marketplace for a professional magazine of this type.

The Report states "industry representatives" recommend an independent circulation audit be conducted. We are not certain as to what this encompasses. If such refers only to determining the amount of circulation and the identity of the potential readership, these facts are already known--the Journal is sent to every lawyer and judge in this state, to major law schools and law libraries throughout the country and a small number of independent subscribers (such as out-of-state attorneys). If the term "independent circulation audit" is meant to include a survey or means to determine the type of articles which our readers desire, we suggest that the Journal Committee--practicing lawyers and judges--is competent to make such a determination. The cost of a survey of the entire readership would be substantial and we question whether such is warranted.

As to methods of obtaining advertising, the Journal has over the past five years frequently considered obtaining professional help in expanding its advertising revenue. The fact encountered at each juncture was that the cure was more expensive than the disease. Media representatives demand a substantial portion of the present revenue in return for the possibility of increasing

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that gross revenue somewhat, and it was believed unsound from a fiduciary standpoint to gamble with so little assurance of an increased net. The Journal will, however, continue to investigate the possibility of contracting with such a firm.

The assertion that the Journal is lacking in professional management was considered to be without merit. It ignores the true situation. The publication has two full-time paid staff members. The Managing Editor has worked as a reporter for a daily newspaper, a supervisor of a design and graphics company and a contributing editor for a trade newspaper. The assistant to the Managing Editor and advertising coordinator has comparable experience. Both have B.A.'s in Journalism and are Masters Degree candidates in Mass Communication.

Client Security Fund

1. Fee Assessment

The Auditor General makes the comment that "sufficient balance has been accumulated...in the Client Security Fund... so that fees will be unnecessary in 1977." After review of the experience of the Fund, the Board of Governors recognized this fact and, as early as April 1976, determined not to make any fee assessment re the Client Security Fund for the year 1977.

2. Costs of Administration

Most careful consideration has been given to the availability of funds from the Client Security Fund to bear its administrative costs rather than charging such costs to the general fund of the State Bar. However, General Counsel of the State Bar, in an ably written and well supported memorandum dated December 22, 1976, concludes that under the present statutory language, it is impossible to charge such costs to the Fund.

State Bar General Counsel stated in part as follows:

"The Auditor General's criticism apparently arises by reason of a misunderstanding of the reasons for the State Bar's use of general fund monies to pay the administrative costs of the Client Security Fund (hereinafter 'Fund'). The Auditor General apparently, and mistakenly, believes that the State Bar's use of general fund monies is based on a 1971 Board of Governors' policy resolution (see Report, page 23).

"The legislative history concerning the creation of the Fund demonstrates that the State Bar assured the Legislature and the Governor that the assets of the Fund would be used solely for the payment of claims,

that the language of the enabling legislation was so drafted, and that the Legislature and Governor relied on these State Bar assurances in authorizing the creation of the Fund. In other words, a reasonable interpretation and application of the enabling statute (§6140.5 of the Business & Professions Code), as well as an express commitment to the Legislature, has required use of general fund monies for payment of the Fund's operating expenses.

"In order for the State Bar to pay the administrative costs of the Fund from money now collected for Fund purposes only, an amendment of §6140.5 must be enacted by the Legislature."

Whether or not the Client Security Fund or the general fund bears the administrative cost is really a question of internal management. The source in either instance is the fees paid by lawyers.

We assure the Auditor General that as we gain further experience on the Client Security Fund, the Board will continue to review the activities of this Fund so that adequate projections of expenditures can be made. It may well be that if experience so dictates, no assessments will be made against the Client Security Fund in the next several years. However, this is a judgment which should be reviewed on a basis no less than annually.

Improvement in Use of State Bar Staff

The Auditor General, in his 1974 Report and Recommendations, said that five attorneys then employed could be replaced with five legal secretaries or administrative assistants. This observation was made, in our opinion, without adequately analyzing the activities of the attorneys involved, who were employed in positions which in whole or in part demanded legal experience.

We note the observation in the most recent report that there have been "three opportunities to replace the attorneys in question with less expensive staff." Although the particular positions are not enumerated in the Report of the Auditor General, our records reflect the replacement of an attorney, then serving as an assistant to the Secretary and Executive Director, with an experienced legal secretary when that job became vacant due to promotion. It should be noted that the employment of the experienced legal secretary was at a salary level exceeding that of the attorney's beginning salary. Further, this replacement by a non-attorney was accomplished with some loss of flexibility.

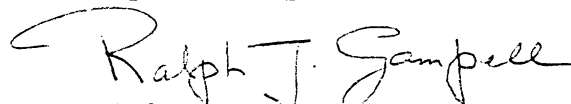
We do point out to the Auditor General in the spirit of his report that, when all such vacancies have occurred in positions

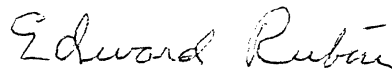
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where administrative assistant types were recommended, consideration has been given to the hiring of non-lawyers. It is indeed our goal to use only non-attorney personnel in positions where attorneys are not required.

We also point out to the Auditor General that the Board of Governors has not been content to rely solely upon its own introspective analysis. Only recently, authorization was given for a complete review, at some expense to the State Bar, of certain aspects concerning job analysis and job function by an independent agency. Upon completion of this review, the Board will obviously be in a better position to consider what, if any, changes should be made in the operation of the State Bar.

Respectfully submitted,


Ralph J. Gampell
President


Edward Rubin
Vice President and Treasurer

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CHIEF DEPUTY

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Legislative Counsel of California

GEORGE H. MURPHY

Sacramento, California
June 2, 1976

Honorable Mike Cullen
Assembly Chamber

Client Security Fund - #10557

Dear Mr. Cullen:

QUESTION

Is the board of governors of the State Bar prohibited from using funds in the Client Security Fund, provided for by Section 6140.5 of the Business and Professions Code, to pay the administrative cost of the fund?

OPINION

The board of governors of the State Bar is not prohibited from using funds in the Client Security Fund, provided for by Section 6140.5 of the Business and Professions Code, to pay the administrative cost of the fund.

ANALYSIS

Section 6140.5 of the Business and Professions Code reads:

"6140.5. (a) The board [of governors of the State Bar] may establish and administer a Client Security Fund to relieve or mitigate pecuniary losses caused by the dishonest conduct of those active members of the State Bar.

APPENDIX A

GERALD ROSS ADAMS
DAVID D. ALVES
MARTIN L. ANDERSON
PAUL ANTILLA
JEFFREY D. ARTHUR
CHARLES C. ASBILL
JAMES L. ASHFORD
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HENRY CLAY FULLER III
ALVIN D. GRESS
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JAMES W. HEINZER
THOMAS R. HEUER
EILEEN K. JENKINS
MICHAEL J. KERSTEN
L. DOUGLAS KINNEY
VICTOR KOZIELSKI
DANIEL LOUIS
JAMES A. MARSALA
DAVID R. MEEKER
PETER F. MELNICOE
MIRKO A. MILICEVICH
ROBERT G. MILLER
JOHN A. MOGER
VERNE L. OLIVER
EUGENE L. PAINE
TRACY O. POWELL, II
MARGUERITE ROTH
MARY SHAW
WILLIAM K. STARK
JOHN T. STUDEBAKER
BRIAN L. WALKUP
THOMAS D. WHELAN
JIMMIE WING
CHRISTOPHER ZIRKLE
DEPUTIES

Any payments from the fund shall be discretionary and shall be subject to such regulation and conditions as the board shall prescribe. The board may delegate the administration of the fund to the disciplinary board provided for in Section 6086.5, or to any board or committee created by the board of governors.

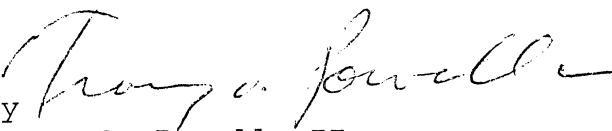
"(b) Commencing January 1, 1972, the board may increase the annual membership fees fixed by it pursuant to Section 6140 by an additional amount per active member not to exceed ten dollars (\$10) in any year, the additional amount to be applied only for the purposes of the fund."

This section gives the board of governors broad discretionary powers with respect to the administration of the Client Security Fund. There is no limitation with respect to using money from the fund to pay the administrative cost of the fund. It is a question of fact as to what costs could be properly allocable to administration of the fund.

We conclude that the board of governors of the State Bar is not prohibited from using funds in the Client Security Fund, provided for by Section 6140.5 of the Business and Professions Code, to pay the administrative cost of the fund.

Very truly yours,

George H. Murphy
Legislative Counsel

By 
Tracy O. Powell, II
Deputy Legislative Counsel

TOP:cc

APPENDIX B

CONSIDERATIONS IN DETERMINING EXPENSE ALLOCATIONS
FOR THE CLIENT SECURITY FUND

We suggest the following considerations for determining charges for administering the Client Security Fund.

Staff Expenses: Determine the percentage of time actually spent by each employee assigned to administer the Fund; multiply each of these percentages times the total gross salary and benefits of the appropriate employee.

Travel Expenses: Determine the total travel expense of assigned staff and Bar members (e.g., those serving on the Fund's committees) from approved travel claims.

Other Expenses: To the extent practical, actual costs should be tabulated for supplies and services consumed in the Fund's administration; otherwise, estimated actual allocations should be developed. Such tabulations or estimates should include at least the following expense items:

- Rent
- Utilities
- Telephone
- Library
- Supplies
- Postage and delivery
- Printing and photocopying
- Investigations
- Insurance
- Bar management and counsel

Office of the Auditor General

cc: Members of the Legislature
Office of the Governor
Office of the Lieutenant Governor
Secretary of State
State Controller
State Treasurer
Legislative Analyst
Director of Finance
Assembly Office of Research
Senate Office of Research
Assembly Majority/Minority Consultants
Senate Majority/Minority Consultants
California State Department Heads
Capitol Press Corps